This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

CB
ASO
CJc

COMMENTARIES

ON

THE MODERN LAW

OF

MUNICIPAL CORPORATIONS

INCLUDING

PUBLIC CORPORATIONS AND POLITICAL AND GOVERNMENTAL CORPORATIONS OF EVERY CLASS

BY

JOHN W. SMITH, LL. D.,

OF THE CHICAGO BAR

Author of "Receiverships," "Equitable Remedies of Creditors"

BEING A REVISED, RE-WRITTEN AND ENLARGED EDITION OF BEACH ON PUBLIC CORPORATIONS

IN TWO VOLUMES

VOL. I

INDIANAPOLIS
THE BOWEN-MERRILL COMPANY
1903

311839

COPYRIGHT 1903
BY
THE BOWEN-MERRILL COMPANY

THE HOLLENBECK PRESS
INDIANAPOLIS

PREFACE TO THE
MODERN LAW OF MUNICIPAL CORPORATIONS.

The changing conditions of the past ten years have brought about an extensive development of the Law of Municipal Corporations.

These changes are so numerous and are of such importance that this new edition is practically a new treatise. Some of the chapters are greatly enlarged, many of them are entirely rewritten and a number of entirely new chapters have been added to treat phases of the subject which have developed since the publication of Beach on Public Corporations.

The cases decided during these last ten years have been carefully examined, and especial care has been taken to cite them accurately.

The author has endeavored to make this a complete and up-to-date treatment of the subject of Municipal Corporations.

Chicago, January 1, 1903. JOHN W. SMITH.

PREFACE TO

BEACH ON PUBLIC CORPORATIONS.

In these volumes I have attempted to consider all the law of public corporations, including municipal corporations, and governmental or political corporations of every class. The scope of the work is, therefore, somewhat wider than that of any other with which I am acquainted. I have proposed to myself the task of making a treatise which shall cover the entire field of public company law in all its details, using the term "public companies" in its widest modern sense, and I have studiously undertaken in the volumes in hand not to omit the law, as declared in the decided cases or defined by statute, of any sort of a public corporation.

This work, therefore, and my "Private Corporations" (Chicago, 1891) complement each other, and, taken together, are intended to constitute a complete treatise, in four uniform volumes, on Company Law in all its phases, from the federal government at the one extreme —which, in this country at least, is the first of public corporations (United States *v.* Maurice, 2 Brock. 96, 109 (*per* Marshall, C. J.); Ableman *v.* Booth, 21 How. 506), possessing defined and limited corporate powers, with the capacity to contract and be contracted with, to sue in its corporate name ("The Government of the United States," Cohens *v.* Virginia, 6 Wheat. 264) and to be sued by consent, and which, having been duly created as a corporation by the people of the several original states, acquired a true corporate entity, and went into operation, or commenced the transaction of its business, on Wednesday, March 4, 1789 (Owings *v.* Speed, 5 Wheat. 420)—to the most insignificant joint-stock association or local incorporation, at the other extreme. Within this wide range should seem to be included

every sort of an association among men which passes for a corporation or a company, aside from partnerships on the one hand, and political sovereignties on the other.

The subject of Public or Municipal Corporations, as compared with that of Private Corporations, is, both in this country and in England, largely statutory, and the intelligent reader will, therefore, perhaps not be surprised at the space given in the text to the consideration of many local statutes and ordinances. Sometimes these statutes are types of classes of statutes found in many states, but perhaps more frequently are distinct and *sui generis,* and must, therefore, in a treatise designed to be general, be separately considered.

In collecting and arranging the matter for so large and comprehensive a work as this, I have, of necessity and as of course, relied very much upon the intelligent and faithful labor of several young men in my office upon whose assistance I have come very much to depend in work of this character, and without which, in view of my other engagements, it would have been altogether impossible for me to prepare the work in its present shape.

I trust that what has been here collected, collated and digested upon this important title may be accorded the same generous and indulgent reception which my other works have had at the hands of my professional brethren.

New York, February 4, 1893. CHARLES F. BEACH, JR.

TABLE OF CONTENTS.

VOLUME I.

CHAPTER I.

INTRODUCTORY—HISTORICAL VIEW.

Section		Page
1.	The genus corporation defined	1
2.	Species of corporations	3
3.	Public corporations, quasi-public corporations and private corporations	4
4.	Subdivisions of public corporations	6
5.	Municipal and public quasi-corporations defined	7
6.	Subdivisions of strictly public corporations	7
7.	Definition of the municipal corporation	9
8.	Definition of the public quasi-corporation	11
9.	Examples of municipal and public quasi-corporations	12
10.	Counties	13
11.	The New England towns	14
12.	The same subject continued	16
13.	The state	17
14.	Long Island towns	18
15.	The development of the municipal corporation—(a) In general	19
16.	(b) Greece and Rome	20
17.	(c) Italy and France—The mediæval cities	21
18.	Conclusion	22

CHAPTER II.

OF THE CREATION OF THE CORPORATION.

19.	The Teutonic town	26
20.	The old English town	27
21.	The same subject continued	28
22.	Guilds	30
23.	The English boroughs	31

SECTION PAGE
24. The same subject continued 33
25. Creation of modern English municipal corporations 34
26. Municipal corporations created by charter from the crown 35
27. Municipal corporations created by act of parliament 36
28. Municipal corporations at common law and by prescription in England 37
29. Municipal corporation by implication in England 38
30. The Municipal Corporations Reform Act of 1835 39
31. The Municipal Corporations Act of 1882 40
32. The American town—Local self-government 42
33. The power to create municipal corporations in the United States —Where vested—(a) In the state 44
34. (b) In the federal government 45
35. Municipal corporations created by the federal government— (a) Territories 46
36. (b) The District of Columbia 47
37. Municipal corporations by prescription in the United States 48
38. The same subject continued—Instances of incorporation by prescription in the United States 49
39. Municipal corporations by implication in the United States 49
40. The same subject continued 50
41. Creation of municipal corporations in the United States—(a) In general 51
42. (b) By special charter 52
43. (c) By general municipal incorporating acts 53
44. Constitutional limitations of legislative power to create municipal corporations 53
45. Construction of such constitutional limitations—(a) Corporations "for municipal purposes" and "bodies politic or corporate" 54
46. (b) "Corporate powers" 55
47. Miscellaneous instances of such constitutional limitations 56
48. Incorporation by courts 56
49. The same subject continued 58
50. Classes of cities under general incorporating acts 59
51. The corporate limits—Territory of the corporation 59
52. Acceptance of charters by corporators not necessary 61
53. The same subject continued 61
54. Substantial compliance with incorporating acts necessary 62
55. Instances of irregularities in incorporation 63
56. Notice of incorporation 64
57. Validity of incorporation—How tested 64
58. The same subject continued 65
59. Existence not questioned collaterally 65
60. The charter of a municipal corporation is a law 66
61. The American township 67
62. Local self-government a delegation of legislative power 68
63. The same subject continued 68
64. Corporations de facto 69
65. Effect of incorporation 70

CHAPTER III.

THE CHARTER.

SECTION PAGE
66. Early charters 72
67. Political element in charters..... 73
68. Charters at the present day..... 74
69. Municipal charters not within the rule of the Dartmouth College case 75
70. The present English statutes..... 76
71. The municipal corporation acts and the royal prerogative..... 77
72. Contents of charter..... 78
73. Prominent features of special charters..... 79
74. What charters can not confer..... 80
75. Wherein the constitutional limitation consists..... 81
76. Acceptance—When necessary..... 82
77. The same subject continued..... 83
78. Compulsory acceptance 84
79. Charters, how proved..... 85
80. Proof of fact of incorporation..... 86
81. Proof of corporate existence..... 87
82. General rules of construction of charters..... 87
83. Can charters be modified..... 89
84. How far the state can enforce performance of local duties..... 90
85. Change in municipal boundaries..... 91
86. Effect of amendments of charter on city ordinances..... 91
87. Reorganization under general law—Effect of..... 92
88. Reorganization must be strictly according to statute..... 93
89. The same subject continued..... 93
90. Effect of adoption of a new constitution..... 94
91. How far special legislation is permissible..... 94
92. Written constitutions—Operation of..... 95
93. Power to make by-laws—How limited..... 97
94. Conflict of by-laws and general acts..... 97
95. The ordinance, when passed, must be reasonable..... 99
96. Reasonableness—How determined 100

CHAPTER IV.

AMENDMENT, REPEAL AND FORFEITURE OF CHARTER.

97. The power of the state to amend, repeal or modify the charters of municipal corporations..... 102
98. The charter of a municipal corporation not within the rule of the Dartmouth College case..... 104
99. Construction of repealing and amendatory acts—(a) General principles 105

SECTION PAGE
24. The same subject continued 33
25. Creation of modern English municipal corporations 34
26. Municipal corporations created by charter from the crown 35
27. Municipal corporations created by act of parliament 36
28. Municipal corporations at common law and by prescription in England 37
29. Municipal corporation by implication in England 38
30. The Municipal Corporations Reform Act of 1835 39
31. The Municipal Corporations Act of 1882 40
32. The American town—Local self-government 42
33. The power to create municipal corporations in the United States —Where vested—(a) In the state 44
34. (b) In the federal government 45
35. Municipal corporations created by the federal government— (a) Territories 46
36. (b) The District of Columbia 47
37. Municipal corporations by prescription in the United States 48
38. The same subject continued—Instances of incorporation by prescription in the United States 49
39. Municipal corporations by implication in the United States 49
40. The same subject continued 50
41. Creation of municipal corporations in the United States—(a) In general 51
42. (b) By special charter 52
43. (c) By general municipal incorporating acts 53
44. Constitutional limitations of legislative power to create municipal corporations 53
45. Construction of such constitutional limitations—(a) Corporations "for municipal purposes" and "bodies politic or corporate" 54
46. (b) "Corporate powers" 55
47. Miscellaneous instances of such constitutional limitations 56
48. Incorporation by courts 56
49. The same subject continued 58
50. Classes of cities under general incorporating acts 59
51. The corporate limits—Territory of the corporation 59
52. Acceptance of charters by corporators not necessary 61
53. The same subject continued 61
54. Substantial compliance with incorporating acts necessary 62
55. Instances of irregularities in incorporation 63
56. Notice of incorporation 64
57. Validity of incorporation—How tested 64
58. The same subject continued 65
59. Existence not questioned collaterally 65
60. The charter of a municipal corporation is a law 66
61. The American township 67
62. Local self-government a delegation of legislative power 68
63. The same subject continued 68
64. Corporations de facto 69
65. Effect of incorporation 70

CHAPTER III.

THE CHARTER.

SECTION PAGE
66. Early charters 72
67. Political element in charters..... 73
68. Charters at the present day..... 74
69. Municipal charters not within the rule of the Dartmouth College case 75
70. The present English statutes..... 76
71. The municipal corporation acts and the royal prerogative..... 77
72. Contents of charter..... 78
73. Prominent features of special charters..... 79
74. What charters can not confer..... 80
75. Wherein the constitutional limitation consists..... 81
76. Acceptance—When necessary..... 82
77. The same subject continued..... 83
78. Compulsory acceptance 84
79. Charters, how proved..... 85
80. Proof of fact of incorporation..... 86
81. Proof of corporate existence..... 87
82. General rules of construction of charters..... 87
83. Can charters be modified..... 89
84. How far the state can enforce performance of local duties..... 90
85. Change in municipal boundaries..... 91
86. Effect of amendments of charter on city ordinances..... 91
87. Reorganization under general law—Effect of..... 92
88. Reorganization must be strictly according to statute..... 93
89. The same subject continued..... 93
90. Effect of adoption of a new constitution..... 94
91. How far special legislation is permissible..... 94
92. Written constitutions—Operation of..... 95
93. Power to make by-laws—How limited..... 97
94. Conflict of by-laws and general acts..... 97
95. The ordinance, when passed, must be reasonable..... 99
96. Reasonableness—How determined 100

CHAPTER IV.

AMENDMENT, REPEAL AND FORFEITURE OF CHARTER.

97. The power of the state to amend, repeal or modify the charters of municipal corporations..... 102
98. The charter of a municipal corporation not within the rule of the Dartmouth College case..... 104
99. Construction of repealing and amendatory acts—(a) General principles 105

SECTION PAGE
100. (b) Statutes in pari materia construed together—Repeal by implication 106
101. Municipal charter not repealed by subsequent general law unless intent to repeal is clear..... 107
102. The same subject continued..... 108
103. Instances of repeal of charter by general acts..... 108
104. Repeal and amendment of charter by subsequent amendment of state constitution..... 109
105. Repeal of general laws by enactment of municipal charter..... 110
106. Repeal of general laws by municipal ordinance..... 111
107. The same subject continued..... 111
108. Construction of amendatory and repealing acts made applicable only to cities of a certain class..... 112
109. Effect of legislation upon the charter of a city organized under special law, and not by its acceptance thereof subject to the general law..... 113
110. Miscellaneous instances of effective repealing and amendatory acts 114
111. The same subject continued..... 115
112. What is an amendment or repeal of a municipal charter?..... 116
113. Repeal—Effect of 117
114. Acceptance of amendment..... 117
115. Manner of acceptance..... 118
116. Constitutional limitations on power of legislature to amend or repeal municipal charters—(a) In general..... 118
117. (b) Special legislation..... 119
118. (c) Vested rights—Impairment of obligation of contracts—Recognition by constitution..... 120
119. (d) Title of amendatory or repealing acts..... 121
120. The same subject continued..... 121
121. Forfeiture of charter in England..... 122
122. The same subject continued..... 123
123. Instances of forfeiture of charter under English law..... 123
124. The charter of a municipal corporation in the United States can not be forfeited by judicial action..... 124
125. The same subject continued..... 124

CHAPTER V.

MEMBERSHIP AND CITIZENSHIP—PERSONAL LIABILITY OF MEMBERS OF THE CORPORATION.

126. Definitions—Membership—Citizenship 126
127. Qualifications for membership in English municipal corporations 127
128. The same subject continued..... 128
129. Qualifications for membership in American municipal corporations 128

SECTION PAGE
130. Citizenship in England 129
131. The same subject continued 130
132. Citizenship in the United States 131
133. Natural citizens 131
134. The same subject continued 132
135. Naturalized citizens 132
136. The same subject continued 133
137. Right of naturalized citizens to hold and receive lands 134
138. The status of Chinese before the law 135
139. The status of American Indians before the law 135
140. Privileges and immunities of citizens 136
141. The same subject continued 137
142. Rights of citizens 139
143. The same subject continued 140
144. Personal liability of members of the corporation 140
145. The same subject continued—Russell v. The Men of Devon 141
146. Personal liability of members of public quasi-corporations in New England 142
147. The same subject continued 143
148. Beardsley v. Smith—(a) The reason for the New England doctrine of personal liability of members 143
149. (b) The doctrine in England 144
150. (c) The doctrine in Massachusetts and Maine 145
151. (d) The doctrine in Connecticut 146
152. Limitations upon the personal liability of members of New England public quasi-corporations 148

CHAPTER VI.

OFFICERS AND AGENTS.

153. Legislative power to create officers and agents 150
154. Legislative control over officers and agents 151
155. Who are officers? 151
156. Conduct of elections—Construction of election statutes 152
157. Miscellaneous instances of the construction of election statutes. 153
158. Validity of election—General principles 155
159. The same subject continued—Illustrations 155
160. English rule as to majority 157
161. Election by ballot 158
162. Election by city council 159
163. Election by definite bodies generally—Majority and plurality.. 160
164. The same subject continued—Quorum majority 161
165. Informal ballot 162
166. Tenure of office 163
167. Tenure of office where city passes from one class to another.... 165
168. Power to hold over—English and American rules 166
169. The same subject continued 167

SECTION PAGE
170. Appointment of officers..... 168
171. Validity of appointment..... 170
172. Appointment by de facto officers..... 171
173. Compensation of officers—In general..... 171
174. The same subject continued—Failure of corporate funds..... 174
175. The same subject continued—Illustrations..... 176
176. Miscellaneous instances..... 177
177. Extra compensation 178
178. Compensation of attorneys..... 181
179. The same subject continued..... 182
180. Compensation—Power of legislature to control..... 183
181. Compensation in case of removal..... 184
182. Qualifications for office-holding..... 185
183. Official oath..... 186
184. The same subject continued..... 187
185. Duties of officers..... 187
186. Powers of mayor..... 188
187. The same subject continued—Statutory provisions..... 190
188. The same subject continued—Miscellaneous powers..... 191
189. Miscellaneous instances of powers of municipal officers..... 192
190. De facto officers—General statement..... 194
191. The same subject continued—Color of title..... 195
192. Incumbent of an unconstitutional office..... 196
193. Possession of office by de facto officer..... 197
194. Rights and liabilities of de facto officers..... 197
195. Resignation by acceptance of incompatible office..... 198
196. Acceptance and withdrawal of resignation..... 199
197. Removal of officers and agents—How effected..... 200
198. Causes for removal—English and American rules..... 202
199. Preferring of charges..... 203
200. Power of corporation to remove officers and agents..... 204
201. The same subject continued..... 205
202. Notice of proceeding to remove..... 206
203. The same subject continued..... 207
204. By whom discharged..... 208
205. All persons charged with notice of duties and powers of municipal agents 210
206. Liability of officers to the corporation..... 210
207. Instances of fraudulent acts of municipal agents..... 211
208. Liability of corporation to officers..... 212
209. Indictment of municipal officers..... 213

CHAPTER VII.

PERSONAL LIABILITY OF OFFICERS AND AGENTS.

210. Liability on contracts—Presumption against liability..... 215
211. The same subject continued—Negotiable instruments..... 216
212. The same subject continued—Excess of authority, fraud, etc.. 217

SECTION PAGE
213. Exemption from liability for legislative acts..... 218
214. The foregoing rule qualified—Breach of trust..... 219
215. Liability of judicial officers considered..... 220
216. Quasi-judicial officers—Corrupt motive..... 221
217. Liability of ministerial officers..... 222
218. The same subject continued..... 223
219. No personal liability for strictly public acts..... 224
220. Default of subordinates..... 225
221. Ejection of member of council by order of mayor..... 226
222. Negligence of recorder of deeds..... 228
223. The same subject continued..... 229
224. Liability of assessor of taxes..... 229

CHAPTER VIII.

THE LIABILITY OF THE CORPORATION FOR THE ACTS OF ITS OFFICERS AND AGENTS.

225. Introductory 232
226. Liability ex contractu—Requirements for valid contracts..... 232
227. Contracts within scope of powers of corporation..... 233
228. The same subject continued..... 234
229. The doctrine of ultra vires applied with greater strictness to public than to private corporations..... 235
230. The reason for the rule..... 235
231. Municipal bonds void when ultra vires..... 236
232. The same subject continued..... 236
233. Ultra vires—How modified by estoppel..... 237
234. The same subject continued—Hitchcock v. Galveston..... 237
235. Irregularity in exercise of power..... 239
236. Ultra vires—How modified by the doctrine of implied contract—General principles..... 239
237. The same subject continued..... 240
238. Illustrations of the doctrine of implied contracts..... 241
239. The same subject continued..... 242
240. Liability of the corporation to repay taxes illegally collected.. 242
241. The same subject continued—Restrictions..... 243
242. Illegality of assessment..... 244
243. Actual receipt of taxes by the corporation..... 244
244. Compulsory payment of taxes..... 245
245. The same subject continued..... 246
246. Illustrations of the rule..... 246
247. The same subject continued..... 247
248. The doctrine of the federal supreme court considered..... 248
249. The same subject continued..... 249
250. Contracts within the scope of powers of officer or agent..... 249
251. The same subject continued—Clark v. Des Moines..... 250
252. All persons contracting with strictly public corporations charged with knowledge of scope of powers of officer or agent..... 252

SECTION PAGE
253. The same subject continued..... 253
254. Liability of corporation for act of its officers or agents in violation of law..... 254
255. The same subject continued..... 255
256. Effect of representation of officer or agent as to authority..... 255
257. The same subject continued..... 256
258. Ratification of contracts..... 257
259. The same subject continued..... 257
260. Ratification by authorized officers necessary..... 258
261. Manner of ratification..... 259
262. Manner of execution of contracts by officers and agents..... 259
263. The same subject continued..... 260
264. Contracts by ordinance or resolution..... 261
265. Signature of contract..... 262
266. The same subject continued..... 262
267. Liability ex delicto—(a) In general..... 263
268. (b) Discretionary and legislative acts..... 263
269. (c) The same subject continued..... 264
270. (d) Ministerial acts..... 265
271. (e) Public as contradistinguished from private duties..... 265
272. The rule applied to public quasi-corporations..... 266
273. Conclusion 267

CHAPTER IX.

PUBLIC BOARDS.

274. Corporate assemblies of the old English corporations..... 269
275. The same subject continued—Notice at common law..... 270
276. The same subject continued—Presence of the mayor..... 271
277. Regular or stated meetings—Time for holding..... 272
278. Adjournments 273
279. Special meetings 274
280. Adjourned meetings 274
281. Notice of special meetings..... 275
282. The same subject continued—Specification of object of meeting. 277
283. Adjourned meetings—Time for holding..... 278
284. Corporation represented by governing boards..... 279
285. The same subject continued—Meeting essential to official action. 279
286. The same subject continued—Delegation of powers.....281
287. The same subject continued..... 283
288. Delegation of powers—A Pennsylvania case..... 283
289. The same subject continued—The rule limited..... 284
290. Constitution of council..... 286
291. The same subject continued..... 286
292. Conflicting councils—Kerr v. Trego..... 287
293. Acts of de facto councils..... 288
294. Quorum of definite body..... 289

SECTION PAGE
295. The same subject continued 291
296. The same subject continued—An exception to the rule 291
297. The same subject continued—Special charter provisions 292
298. Quorums and majorities further considered—The rule in England 292
299. The same subject continued—Decisions in the United States 293
300. Further application of majority principle 294
301. Execution of authority vested in two persons 295
302. Presiding officer 295
303. The same subject continued 297
304. Commitment for contempt—Whitcomb's case 298
305. Ayes and nays 299
306. Parliamentary law 300
307. Reconsideration and rescission—General power 301
308. The same subject continued 301
309. Power to reconsider and rescind qualified 302
310. The same subject continued 303
311. Reconsideration distinguished from appeal 304
312. Joint assemblies of definite bodies—Constitution and proceedings 305
313. Record of meetings 305

CHAPTER X.

OFFICIAL BONDS.

314. Official bonds—Definition 308
315. What officers must give bonds 308
316. Form and requisites of bond 309
317. Effect of signing official bonds in blank 309
318. The same subject continued 310
319. Construction of courts on bonds improperly approved 310
320. Defective bonds valid as common-law obligations 311
321. The same subject continued 312
322. Time when an official bond takes effect 312
323. Effect of not filing bonds within the time prescribed by statute .. 313
324. The same subject continued 313
325. Liability of sureties on a treasurer's bond 314
326. The same subject continued 315
327. Mingling of and defalcation out of two funds 316
328. Liability of sureties as affected by subsequent legislation 317
329. Liability of surety when subsequent legislation imposes new duties of the same general character 317
330. The same subject continued 318
331. Liability of officer on his bond where the loss is occasioned by the act of God or the public enemy 319
332. The same subject continued 320
333. Duty of obligee to notify sureties of increased risk, etc 320

SECTION PAGE
334. Liability of sureties on successive bonds—(a) Where different sureties are given on each bond 321
335. The same subject continued 322
336. (b) Where funds received by the officer during his first term remain in his hands during his second term 322
337. (c) When the sureties of the first term are liable for money converted or collected by the officer during his second term .. 323
338. (d) When an officer before entering on his second term makes a report to or settlement with the proper authorities 323
339. The same subject continued 324
340. (e) Where the officer applies money received in his second term to pay deficiencies in his first term 325
341. (f) Where the bond is given for a term of office or a certain period of time 326
342. Laches or negligence of other officers or principal 326
343. Liability of sureties where additional bonds are given 327
344. Liability of surety where the official occupies two or more offices 327
345. Liability of surety for unofficial acts of officer 328
346. The same subject continued 329
347. Liability of sureties for acts done under color of office 329
348. The same subject continued—Lammon v. Feusier—The doctrine of the federal supreme court 330
349. The same subject continued 330
350. The same subject continued—The doctrine of the state courts .. 331
351. The same subject continued 332
352. Illustrations of the doctrine 333
353. Distinction between judicial and ministerial duties 333
354. Illustrations of the doctrine 334
355. The same subject continued 335

CHAPTER XI.

MEETINGS AND ELECTIONS.

356. Town meeting in New England and elsewhere 338
357. Right to meeting—Mandamus to enforce 339
358. Application for and authority to call a meeting 340
359. Secondary authority to call a meeting 341
360. General purpose of a warning 341
361. Designation of time and place of meeting 342
362. General and formal requisites of a warrant 343
363. The same subject continued 344
364. Service of warrant 345
365. Time of service 346
366. Return of service 347
367. Notice of annual meetings 348
368. The same subject continued 349
369. Time of meeting 349

SECTION PAGE
370. Place of meeting 350
371. Organization of meeting—The moderator 350
372. The same subject continued—Clerk and clerk pro tempore 351
373. Adjournments of meetings 352
374. The same subject continued 353
375. The power of adjournment limited 354
376. Adjourned meetings 354
377. Reconsideration and rescission—The general rule 355
378. The same subject continued—Illustrations 356
379. The same subject continued—The rule qualified 357
380. Ratification of doings of invalid meetings 358
381. Parliamentary law in town meetings 359
382. The same subject continued—Illustrations 359
383. Validity of votes as determined by the warrant—Illustrations 360
384. The same subject continued 361
385. Invalidity of votes—Illustrations 362
386. The same subject continued 363
387. Votes at town meeting—General rules of construction 364
388. Record of proceedings 364
389. Parol evidence of proceedings 365
390. Doings of meetings not legally called 366
391. Presumptions in favor of ancient meetings 367
392. Notice of election 368
393. Qualification of voters—Power to prescribe 369
394. Registration acts 370
395. Place of election 371
396. The same subject continued 372
397. Popular elections—Plurality 373
398. The same subject continued—Majorities, etc 374
399. Voting by ballot 374
400. The same subject continued 375
401. The Australian ballot and cumulative voting 376
402. Absolute accuracy not required in a ballot 377
403. Votes for ineligible candidates 378
404. Putting up offices at auction—Tax collector 379
405. City council as judge of election and qualification of its members 380
406. Canvass and return and contest of elections 380

CHAPTER XII.

CONSOLIDATION AND REORGANIZATION.

407. How effected 382
408. Power of legislature 383
409. Constitutionality of laws for annexation 383
410. Delegation of legislative power 384

SECTION PAGE
411. Illinois decisions 385
412. Maryland decisions 386
413. Michigan decisions 387
414. Missouri and Tennessee decisions 387
415. Ruling as to Baltimore City 388
416. Rule as declared in Washington 389
417. Powers of cities under the laws 389
418. The same subject continued 390
419. What may be annexed—General rule 391
420. The same subject continued—Construction of statutes 392
421. The same subject continued 392
422. Right of taxation as to annexed lands 393
423. Taxation for antecedent indebtedness 394
424. Remedy of taxpayer 395
425. Effect of consolidation 395
426. The same subject continued 396
427. Annexation proceedings—Notice 396
428. Mode of voting 397
429. Jurisdiction and procedure 398
430. The same subject continued 399
431. Reasonableness of annexation 400
432. Validity of annexation 400
433. Procedure to test validity 401
434. The same subject continued 402
435. Special acts as to reorganization 403
436. Nebraska act 403
437. Effect of reorganization 404
438. The same subject continued 405
439. The same subject continued—Decisions in California and Tennessee 405
440. Validity of reorganization—Special cases 406
441. Invalid reorganization 407
442. Property rights passing to new corporation 408
443. For what the reorganized corporation becomes liable 409
444. Further scope of the foregoing doctrine 410
445. What are such liabilities 410
446. Remedy of creditors of the old corporation 411

CHAPTER XIII.

PARTITION AND DISSOLUTION.

(a) PARTITION.

447. Partition—General rule 415
448. Validity of partition 416
449. Rules as to division of counties and towns 417
450. Procedure for division not applicable in vacating a town 418

SECTION PAGE
451. Indiana rules 419
452. Michigan rules 420
453. Rules as to severing territory 421
454. Pennsylvania rule 421
455. Constitutionality—Wisconsin 422
456. Rulings as to constitution of Wisconsin on division of counties. 423
457. The same subject continued—Uniformity of system of government 424
458. Title of act 425
459. Florida decisions on constitutionality of acts 426
460. Kansas decisions 427
461. How partition affects officers 427
462. Where unorganized territory has been attached to a county..429
463. Settlement of inhabitants 430
464. Territory severed from an old to form a new corporation is a part of the old until the new is fully organized 431
465. Some Wisconsin acts construed 431
466. Provisions of act as to county sites 432
467. Apportionment of liabilities 433
468. Rules as to property and liabilities 434
469. The same subject continued 435
470. A Wisconsin case on property rights 436
471. Rules as to apportionment of liabilities and remedies 437
472. Rules in North Carolina as to settlement between new and old counties 438
473. Rules for adjustment of liabilities 439
474. Liabilities which fall upon the portion severed 440
475. Defenses to claims growing out of partition 441
476. Enforcement of obligations of old and new 443
477. Miscellaneous 444

(b) DISSOLUTION.

478. Dissolution—How effected in general 445
479. The same subject continued 446
480. Surrender of charter 447
481. The same subject continued 448
482. Florida decisions on constitutionality of acts to dissolve 449
483. Vacated towns 450
484. This was no dissolution 451
485. Effect of dissolution as to liabilities and funds in hand 451
486. Effect of dissolution upon liabilities 452
487. What does not affect liabilities and remedies 454
488. Repealing charters 455
489. The same subject continued 456
490. Receiver for a city 457
491. The same subject continued 458
492. Where such a receiver was appointed 459

CHAPTER XIV.

ORDINANCES AND BY-LAWS.

SECTION		PAGE
493.	Introductory	462
494.	By-laws, ordinances and resolutions	462
495.	Distinction between ordinance and resolution	463
496.	The same subject continued—Illustrations	464
497.	The province of ordinances	465
498.	Power to make ordinances	466
499.	The same subject continued	467
500.	By whom the power is to be exercised	469
501.	Validity generally	469
502.	Validity in respect of form—(a) Meeting of council	470
503.	(b) The same subject continued	471
504.	(c) Quorum and votes	472
505.	(d) The same subject continued	474
506.	(e) Mode of enactment	476
507.	(f) The same subject continued	478
508.	(g) The signing of the ordinance	479
509.	(h) The same subject continued	480
510.	The veto power	481
511.	(i) Publication of the ordinance—When mandatory	482
512.	(j) The same subject continued—When directory	483
513.	(k) The same subject continued—Amendments and re-enactments	484
514.	(l) Manner of publication	485
515.	(m) The same subject continued	486
516.	(n) Time and proof of publication	487
517.	(o) Title of the ordinance	488
518.	(p) Record of the ordinance	490
519.	Validity in respect of matter—(a) Constitutionality	491
520.	(b) The same subject continued	492
521.	(c) Consistency with statute and charter	493
522.	(d) The same subject continued	494
523.	(e) Consistency with general penal law	495
524.	(f) The same subject continued	497
525.	(g) Reasonableness of the ordinance	499
526.	(h) The same subject continued—Illustrations	502
527.	(i) The same subject continued—Reasonableness a question of law	505
528.	(j) Vagueness of the ordinance	506
529.	(k) Ordinances void for want of notice	507
530.	(l) Ordinance granting arbitrary power	508
531.	(m) Ordinance delegating power	509
532.	(n) Ordinances which are contracts	510
533.	(o) Ordinances as to improvements—Valid	511
534.	(p) Ordinances as to improvements—Invalid	512
535.	(q) Miscellaneous ordinances—Valid and invalid	513

SECTION PAGE
536. (r) Jurisdictional matters in relation to ordinances..... 514
537. (s) Curative ordinances..... 514
538. (t) Scope, force, effect, etc., of ordinances..... 515
539. Motives of council not to be impeached..... 516
540. Construction of ordinances..... 516
541. The same subject continued—Miscellaneous..... 518
542. Ordinances void in part..... 519
543. Amendment and repeal—By subsequent ordinance..... 520
544. Repeal by act of the legislature..... 522
545. Repeals by implication..... 523
546. Power to impose penalties..... 526
547. Mode of enforcement of ordinances—By a purely civil action... 527
548. Jurisdiction of proceedings..... 529
549. Imprisonment in default of payment of fine..... 529
550. Imprisonment as a penalty..... 531
551. Forfeitures 531
552. The same subject continued..... 533
553. Cumulative fines and fines for continuous and repeated offenses. 534
554. Enforcement by complaint—Nature of the proceedings..... 535
555. The complaint—General requisites..... 536
556. The same subject continued—Pleading..... 537
557. Pleading further considered..... 538
558. Proof of ordinances..... 539
559. Right to trial by jury..... 541
560. The same subject continued..... 542
561. Certiorari and habeas corpus..... 543

CHAPTER XV.

EXPRESS CORPORATE POWERS.

562. Powers of a municipal corporation generally.....546
563. Delegation of powers..... 547
564. Delegation of power by the municipality..... 549
565. Power which may be delegated..... 551
566. The same subject continued..... 551
567. Exercise of powers..... 552
568. Mode of exercise..... 553
569. Proceedings not reviewable..... 554
570. The same subject continued..... 555
571. Constitutionality of acts granting powers..... 556
572. The same subject continued..... 557
573. Validity of acts granting powers..... 558
574. Power to "trade" should not be granted..... 558
575. Power of towns as to villages within them..... 560
576. Power as to issue of commercial paper..... 561
577. As to trusts..... 563
578. Purchase at tax sales..... 564

SECTION PAGE
579. Granting exclusive franchises 565
580. The same subject continued 567
581. Contracts not exclusive 568
582. Improvements generally 569
583. Costs of improvements 570
584. Gas and water supply 571
585. Natural gas companies 573
586. Establishment of electric plant 574
587. Public property 576
588. The same subject continued 577
589. Parks 578
590. Wharves 579
591. The same subject continued 579
592. Markets 580
593. The same subject continued 581
594. Streets generally 582
595. Construction of statutory provisions 583
596. Protection of streets 584
597. Obstructions in streets 585
598. Use of streets by street-railways 585
599. Telegraph and telephone poles in streets—Removal 586
600. Vacation of streets 586
601. Grading of streets 587
602. Allowing the use of streets by railroads 588
603. The same subject continued 588
604. Regulations as to railroads using streets 589
605. The same subject continued 590
606. Crossings of railways 591
607. Miscellaneous matters relating to streets 592
608. Sewers 593
609. Fire-limits—Public health 594
610. Directions as to buildings 595
611. Police power 596
612. The same subject continued 597
613. Regulation of liquor traffic 599
614. To promote health 600
615. General welfare, etc 601
616. To license 602
617. Occupations 602
618. The same subject continued 603
619. Public offenses 606
620. The same subject continued 606
621. Nuisances 607
622. Holidays, etc 608
623. Power to purchase, lease and convey real estate 608
624. Power to subscribe for stock 609
625. Power over watercourses 610
626. Power to aid private charities 610
627. Miscellaneous 611

CHAPTER XVI.

ULTRA VIRES.

SECTION		PAGE
628.	General statement of the rule	613
629.	Purchase of land for use of a railroad	615
630.	Illustrations of the general rule	616
631.	Grant of power to regulate highways construed	617
632.	Contracts for exclusive privileges in highways	618
633.	Strictly official duties not to be confided to non-official persons	619
634.	Police ordinances—Wooden buildings	619
635.	The same subject continued—Railroad crossings	620
636.	The same subject continued—Markets, etc	622
637.	Donations	622
638.	The same subject continued	623
639.	Subscribing to stock of railroads	624
640.	City council as judge of elections	625
641.	Governing authorities of school districts	626
642.	The same subject continued	627
643.	Purchase of real estate for school purposes—Texas ruling	628
644.	Condemnation of land outside of territorial limits	628
645.	Diversion of lands dedicated to public uses	629
646.	Sale of real estate—Prescribed mode controls	630
647.	Appropriations for highways and school-buildings	631
648.	Power to purchase realty does not authorize giving notes	632
649.	Work on public buildings, etc	633
650.	Issuing of bonds	634
651.	The same subject continued—Municipal aid	635
652.	The same subject continued—Public improvements	636
653.	Contracts abrogating control of streets	637
654.	General legislation—Offers of rewards	638
655.	Contracts for water supply	639
656.	The same subject continued	639
657.	Contracts for lighting streets	640
658.	Grant of exclusive privileges	641
659.	Curative legislation	642
660.	Ratification	643
661.	Estoppel	644
662.	Purchasers of bonds are bound to take notice	646
663.	Corporations may contest ultra-vires contracts	646
664.	Liability upon ultra-vires contracts	647
665.	The same subject continued	648
666.	Ultra vires, when not a defense to actions by the corporation	649
667.	Taxpayers' resistance	650
668.	Taxpayers' suits	651
669.	The same subject continued	652
670.	Suits to restrain the enforcement of contracts	653
671.	Injunction the proper remedy	654
672.	The same subject continued	655

CHAPTER XVII.

IMPLIED POWERS AND EMINENT DOMAIN.

(a) Implied Powers.

Section		Page
673.	General statement of the rule	658
674.	Compromise of claims	659
675.	The same subject continued—Application of the rule in Iowa	659
676.	The dissenting opinion in the Iowa case	660
677.	Compromise of ultra-vires claims	661
678.	Submission to arbitration	662
679.	Employment of attorneys	663
680.	Power to hold property in trust	664
681.	Acquisition of property for other than municipal purposes	665
682.	The same subject continued—Discretion in erecting public buildings	665
683.	Power to indemnify officers	666
684.	The same subject continued	667
685.	Offers of rewards	669
686.	The same subject continued—The power generally denied	669
687.	The same subject continued—The foregoing rule qualified	670
688.	Expenditures in obtaining or opposing legislation	671

(b) Eminent Domain.

689.	Nature and definition	672
690.	The same subject continued—Constitutional limitations	673
691.	What property may be taken	674
692.	Quantity of estate	675
693.	What constitutes a taking	676
694.	The same subject continued—The leading case	676
695.	The same subject continued—Constitutional amendments	678
696.	Property already appropriated to public use	678
697.	The same subject continued	679
698.	Change of grade	680
699.	Change of use—Additional use	681
700.	The same subject continued—Electric railways	682
701.	Grant of power to municipal corporations	684
702.	Public use and necessity of appropriation, by whom determined	685
703.	Legislative declaration conclusive	686
704.	Public use as respects municipalities—Parks and streets	687
705.	The same subject continued—Water, gas, etc	688
706.	The same subject continued—Cemeteries, sewers, etc	689
707.	The same subject continued—Leasing for public use	690
708.	The same subject continued—Ornamental purposes	691
709.	Notice of proceeding—Necessity for	692
710.	Parties entitled to notice	693

SECTION PAGE
711. Service of notice 693
712. Treaty with the owner 694
713. The application or petition 695
714. The tribunal 697
715. Right to jury trial 698
716. Right to abandon proceedings 699
717. Damages upon discontinuance of proceedings 700
718. Compensation 701
719. Elements in estimating compensation 702
720. The same subject continued 703
721. Benefits 704
722. Payment 705
723. Review of proceedings—Certiorari 706
724. The same subject continued—Appeal 707

CHAPTER XVIII.

MUNICIPAL CONTRACTS.

725. Municipal contracts—General 709
726. Contracts—By whom made 709
727. What is municipal contract 712
728. Implied contracts 713
729. Ratification of contracts 714
730. Rescission of contracts 716
731. Modification or alteration of contracts 717
732. Acceptance of work under contract 718
733. Performance of contract 719
734. Waiver of performance 720
735. Breach of contract—Remedy 721
736. Payments on contract 721
737. Validity of contracts—General 723
738. Contracts which have been held valid 725
739. Invalidity of contracts 728
740. Construction of contracts 736
741. Extras 738
742. Exclusive franchises and privileges 739
743. Contracts ultra vires 740
744. Liability of municipality on contracts 741
745. Estoppel 745
746. Letting of municipal contracts 747

CHAPTER XIX.

LEGISLATIVE CONTROL.

747. Legislative control subject to limitations 755
748. Powers that the state can not relinquish 756
749. Impairment of legislative grants 757

SECTION PAGE
750. The same subject continued..... 758
751. Remission of forfeitures..... 758
752. Property held for public uses..... 759
753. Tenure of office of municipal officers..... 760
754. Agencies of municipal administration..... 760
755. Diversion of funds..... 761
756. The same subject continued—Public interest paramount to private right..... 762
757. Application of revenues..... 762
758. The same subject continued..... 763
759. Impairment of obligations to individuals..... 763
760. The same subject continued..... 764
761. Impairment of remedies against the corporation..... 765
762. The same subject continued—Control of taxing power limited.. 765
763. Vacating assessments of damages..... 766
764. The rule summarized..... 767

CHAPTER XX.

TORTS AND CRIMES.

765. Torts by the sovereign power..... 770
766. The state not liable for officers' torts—No respondeat superior.. 771
767. Suits against United States—Court of claims..... 772
768. Suits against New York—Board of claims..... 773
769. Counties, etc., as divisions of the state..... 774
770. The same subject continued..... 775
771. Non-liability of New England towns..... 776
772. Liability of New York towns..... 777
773. Liability of towns, etc., as to special duties..... 778
774. Non-liability of school districts and drainage districts..... 779
775. Non-liability for separate boards and bodies..... 780
776. Non-liability for torts of independent officers..... 781
777. The same subject continued—Who are independent officers..... 782
778. The same subject continued—Applied in New York City, etc.... 783
779. Liability of municipal corporations in tort—General principles. 784
780. Liability in performance of public or governmental functions.. 785
781. Duties which are mandatory and discretionary..... 786
782. Duties legislative or judicial..... 787
783. Liability for torts of public officers..... 787
784. Liability for torts of officers not public..... 788
785. Liability in making improvements, etc..... 789
786. Torts in diverting watercourses, surface water, etc..... 790
787. Respondeat superior not applicable to public officers..... 791
788. Negligence as an element of tort..... 793
789. Liability for collision of vessels..... 795
790. Torts of independent contractor..... 795
791. Miscellaneous matters in relation to torts..... 796

SECTION PAGE
792. Non-liability for firemen 797
793. Non-liability for police 798
794. Liability for acts of mobs 799
795. Private interests must yield to public 800
796. The same subject continued—Destroying buildings to check fire. 802
797. Non-liability for negligence in public service 802
798. Liability in matters of arrest 804
799. Non-liability as to jails 804
800. Non-liability as to hospitals 806
801. Non-liability as to fireworks 807
802. Liability as to city wells and water 808
803. Non-liability to trespassers 809
804. Liability for nuisances 810
805. Municipal liability in general 812
806. Chartered cities, etc., distinguished from counties, etc.—The conflict 812
807. Municipal liability in exercise of private powers 814
808. Liability commensurate with duty 816
809. Municipal liability as to water front 817
810. Liability for fright of horses 817
811. Municipal liability for acts of officers and agents 818
812. Not liable for ultra-vires acts of officers 819
813. Non-liability in the exercise of discretionary powers 819
814. The same subject continued—New York and Georgia rule 821
815. The same subject continued—Drainage 821
816. Non-liability for errors of judgment 822
817. Liability for trespass 823
818. Liability for waste 825
819. Liability after notice—Implied notice 826
820. The same subject continued—Statutory notice 827
821. The same subject continued—New York decisions 829
822. Impeaching municipal legislative acts for fraud 829
823. Indictment for torts 830
824. Not indictable for felony 832

VOLUME II.

CHAPTER XXI.

FISCAL MANAGEMENT.

(a) POWER TO INCUR INDEBTEDNESS.

825. Manner of contracting 834
826. Construction of statutory provisions 835
827. Borrowing money 837
828. The same subject continued 838
829. Employment of attorneys 840

SECTION PAGE
830. Contracts for construction of county buildings..... 840
831. Support of the poor..... 841
832. Taxation for school purposes..... 843
833. The same subject continued..... 844
834. The same subject continued—Validity of resolutions..... 845
835. Levy of taxes..... 846
836. Contracts for water supply and lighting..... 847
837. School boards and directors..... 848
838. Erection of school-houses..... 849
839. School district boards—Contracts for building..... 851
839a. Contracts with teachers..... 852
840. Authority of county treasurer, etc..... 853
841. Authority of officers in particular instances..... 854
842. The same subject continued..... 855
843. Powers of a trustee of a school township..... 856
844. Town selectmen, etc..... 857
845. The same subject continued..... 858
846. Township boards..... 859
847. The same subject continued—Michigan decisions..... 860
848. Town trustees—Indiana decisions..... 861
849. The same subject continued..... 862
850. Directors of schools—Illinois decisions..... 864
851. Town supervisors—Illinois and Minnesota decisions..... 865
852. Power of towns and town officers in Maine..... 866
853. Powers of towns in Massachusetts..... 866
854. Michigan decisions..... 867
855. Selectmen in New Hampshire..... 868
856. Towns and town officers in New York..... 869
857. Vermont decisions..... 870
858. Debts which are valid..... 871
859. Debts which are invalid..... 872
860. Miscellaneous matters pertaining to municipal debts..... 872

(b) LIMITATION OF INDEBTEDNESS.

861. Limitation on power to create municipal indebtedness..... 873
862. Indebtedness depending on popular vote..... 874
863. Indebtedness limited by a per cent. of valuation..... 875
864. Preliminary provisions for a sinking fund..... 875
865. Aggregate indebtedness—How determined..... 875
866. Evasion of constitutional limitations..... 880
867. Indebtedness in excess of limit not a defense, when..... 882
868. Construction of constitutional provisions..... 882
869. Rulings of the United States supreme court..... 884
870. Rulings in California..... 885
871. Rulings in Colorado..... 886
872. Rulings in Illinois..... 887
873. Rulings in Indiana..... 889
874. Rulings under the Iowa constitution..... 890
875. The same subject continued..... 891

SECTION PAGE
876. Rulings under the Oregon and Washington constitutions..... 891
877. Rulings under Texas laws..... 892
878. Rulings in West Virginia..... 893
879. Special statutory provisions..... 893
880. The same subject continued..... 894
881. Indebtedness for water and lights..... 895
882. Effect of exceeding the limit..... 896
883. Remedy of taxpayers against increase of debt..... 897

CHAPTER XXII.

MUNICIPAL FUNDS.

(a) CARE AND DISBURSEMENT OF FUNDS.

885. Funds appropriated to specific uses..... 900
886. Custodians of funds..... 901
887. The same subject continued..... 903
888. Compensation of treasurers..... 904
889. The same subject continued..... 905
890. Settlements with treasurers..... 906
891. Actions to recover county funds..... 907
892. Actions on treasurer's bonds..... 908
893. Public depositories..... 909
894. Examination of county officers' accounts..... 910
895. Liability of custodians of funds..... 911
896. Liabilities on bonds of custodians of school funds..... 912
897. Investment of school funds..... 913
898. Loan of school funds..... 913
899. Liability of officers and agents of towns..... 914
900. Miscellaneous expenditures..... 915

(b) APPROPRIATIONS.

901. Appropriations out of special funds..... 916
902. Appropriations anticipating revenue..... 917
903. Special funds..... 918
904. The same subject continued—Construction of statutes..... 918
905. Statutory provisions further considered..... 919
906. Appropriations for schools..... 920
907. The same subject continued..... 922
908. Budget..... 923
909. Annual appropriations..... 924
910. Appropriation of taxes to sinking fund..... 924
911. Validity of appropriations..... 925
912. Appropriations held to be void..... 926

(c) UNLAWFUL EXPENDITURES.

SECTION PAGE
913. The New York statute providing for investigation..... 926

(d) CLAIMS.

914. Presentation of claims for allowance..... 928
915. Notice—Sufficiency, etc. 929
916. Notices which have been held sufficient or insufficient..... 929
917. Statute applies to claims for tort..... 930
918. Decision based upon notice not final..... 930
919. Miscellaneous matters concerning presentation..... 931
920. Interest on claims..... 931
921. Compromise of claims..... 932
922. Presentation of claims continued..... 932
923. The same subject continued..... 933
924. The same subject continued—Verification of claim..... 935
925. Presentation of claims for injuries..... 935
926. Presentation as a condition precedent to right of action..... 937
927. Allowance of claims..... 938
928. The same subject continued—Procedure..... 939
929. The same subject continued—Adjudication by the board..... 940
930. Conclusiveness of adjudication 941
931. Proceedings after disallowance of claim..... 942
932. Malfeasance in over-allowance..... 943
933. Proper and improper charges against a county..... 943
934. The same subject continued..... 944
935. Apportionment of indebtedness upon division of a county..... 945
936. Claims of contractors for extra work..... 946
937. Claims for services to indigent persons..... 947
938. Proceedings to enforce payment of judgments..... 948
939. Mandamus to county officers..... 949

(e) WARRANTS.

940. Character of warrants as evidences of indebtedness..... 950
941. How drawn 953
942. Mandamus to compel the signing of a warrant..... 954
943. How payable—From what fund..... 955
944. Duty of officers in drawing warrants..... 956
945. Validity of warrants..... 957
946. Actions upon warrants..... 958
947. Mandamus to compel payment of warrants..... 960
948. Defenses to actions on warrants..... 961
949. Notes of counties..... 963
950. Notes of towns..... 964
951. Township orders 965
952. The same subject continued..... 966
953. School board orders..... 967
954. School warrants..... 968

CHAPTER XXIII.

BONDS AND COUPONS.

SECTION		PAGE
955.	Implied power to issue bonds	971
956.	The doctrine of the supreme court of the United States	973
957.	The same subject continued—Brenham v. German-American Bank	974
958.	Same continued—State decisions	975
959.	Agency in issuing	977
960.	The corporation must have a legal existence	977
961.	No right of action on void bonds	978
962.	Constitutional limitations—Public purpose	978
963.	Aid to manufacturing enterprises	980
964.	Internal improvements	981
965.	Municipal aid to railroads—Express legislative authority essential	981
966.	Railway aid bonds—Legislature may authorize	982
967.	The same subject continued—Negotiable bonds	984
968.	Conditions precedent	984
969.	Bonds—Constitutional requirements	985
970.	The same subject continued—Assent of taxpayers	986
971.	The same subject continued—Election	987
972.	Conduct of election continued	989
973.	Conditional subscriptions	990
974.	The same subject continued	991
975.	Ratification	992
976.	The same subject continued	994
977.	Effect of consolidation of companies on authority to subscribe	994
978.	Effect of constitutional prohibitions	995
979.	The same subject continued	996
980.	Recitals in municipal bonds	997
981.	Negotiability of bonds	1012
982.	Signature to bonds	1013
983.	Sealing	1014
984.	Date—Ante-dating	1015
985.	To whom payable	1015
986.	Place of payment	1016
987.	Time of maturity	1016
988.	Delivery	1017
989.	Quality of municipal bonds as commercial paper	1018
990.	Coupons	1019
991.	Payment of coupons	1019
992.	Interest upon interest	1020
993.	Refunding, substituted and renewal bonds	1020
994.	The same subject continued	1022
995.	Estoppel by matter in pais	1022
996.	Estoppel to set up overissue in violation of statute	1023
997.	Overissue in violation of the constitution—No estoppel by recitals	1024

SECTION PAGE
998. The same subject continued—The rule qualified.....1024
999. Bona fide holders.....1025
1000. The same subject continued.....1026
1001. Defenses available against bona fide holders.....1027
1002. The same subject continued.....1028
1003. Validity of bonds.....1028
1004. Invalidity of bonds.....1029
1005. Sale of bonds.....1030
1006. Miscellaneous 1033

CHAPTER XXIV.

CHARITIES AND CORRECTION.

1007. General rules governing directors of poor, etc.....1034
1008. Rulings in Massachusetts as to overseers of the poor.....1036
1009. Rulings in Maine and New York.....1036
1010. Contracts by governing boards for the support of the poor.....1037
1011. Discretionary powers of governing boards.....1039
1012. Medical treatment for the poor.....1040
1013. The same subject continued.....1041
1014. Settlement of paupers—Generally.....1041
1015. The same subject continued.....1042
1016. The same subject continued—Illegitimate children.....1043
1017. Massachusetts decisions on settlement of soldiers mustered out of service.....1044
1018. Settlement of married women.....1045
1019. Settlement acquired by residence and payment of taxes.....1046
1020. The same subject continued.....1047
1021. Constitutionality of laws for the removal of paupers.....1048
1022. Rulings on removal of paupers.....1049
1023. Notice in cases for removal of paupers.....1050
1024. Notice of charge by one town to another.....1051
1025. What corporations are liable for support of paupers.....1052
1026. No implied liability.....1053
1027. Special liabilities.....1054
1028. Various rulings as to the poor.....1054
1029. Support of patient at state lunatic asylum—Persons "in need of immediate relief".....1055
1030. The same subject continued.....1056
1031. Support of insane poor further considered.....1057
1032. Aid to children.....1058
1033. Liability of corporations to those furnishing support to paupers 1058
1034. The same subject continued.....1059
1035. Duty to furnish immediate relief.....1060
1036. Proceedings to compel relative to support paupers.....1061
1037. Liability of a pauper for his support.....1062
1038. Municipality can not recover for voluntary aid.....1062

SECTION PAGE
1039. Actions for support of paupers....1063
1040. The same subject continued....1065
1041. Statutes prohibiting bringing paupers from other states....1066
1042. Liability to paupers for negligence of employes....1068
1043. Support of the insane....1068
1044. The same subject continued....1069
1045. Soldiers' homes....1070
1046. Reformatories....1070
1047. Liability of counties for the care of prisoners....1072
1048. Care of prisoners continued....1073
1049. Hiring of convicts....1073
1050. Liability for personal injuries to prisoners....1074
1051. The same subject continued....1075

CHAPTER XXV.

PUBLIC HEALTH—BOARDS OF HEALTH AND QUARANTINE.

1052. Municipal regulations for the promotion of public health....1078
1053. Power of the state legislature....1078
1054. Declaring nuisances is not an exercise of judicial functions....1079
1055. Extent of authority illustrated....1079
1056. The same subject continued....1080
1057. Regulation of occupations....1080
1058. Powers conferred on boards of health not exclusive....1081
1059. Power to control manufactures....1082
1060. Limitations of police power over occupations....1082
1061. Establishment of sanitary districts....1083
1062. The same subject continued....1083
1063. Reasonableness of ordinances....1084
1064. Regulating removal of garbage....1085
1065. Regulating burials and burial permits....1086
1066. Boards of health generally....1087
1067. Powers of town trustees in Iowa as boards of health....1087
1068. Power of boards of health as to employment of physicians....1088
1069. Owner of property condemned as a nuisance entitled to a hearing....1088
1070. The same subject continued....1089
1071. Conclusiveness of determination by board of health....1090
1072. Power of board of health as a corporation—New Jersey decisions....1091
1073. The same subject continued....1091
1074. Injunction upon application of board of health in New Jersey..1092
1075. Abatement of nuisances under general authority to promote health....1093
1076. Power to forbid the exercise of an offensive trade....1093
1077. Actions by town boards of health to suppress nuisances by injunction....1094

SECTION PAGE
1078. Expenditures by boards of health, to what municipal corporation chargeable....1095
1079. No corporate liability for torts of health officers....1096
1080. The same subject continued....1096
1081. Personal liability of members of board of health for negligence....1097
1082. The same subject continued....1098
1083. Quarantine regulations generally....1098
1084. Extent of power of municipal authorities....1099
1085. Liability of owner of vessel for quarantine expenses....1100
1086. Power and duty of boards of health under Florida quarantine laws....1100
1087. Charge against vessels in quarantine....1101
1088. A limitation upon quarantine regulations....1101

CHAPTER XXVI.

SUPPRESSION OF NUISANCES.

1089. Nuisance defined....1103
1090. Not protected by constitution....1104
1091. What are nuisances....1105
1092. Prescriptive right to maintain a nuisance....1106
1093. City can not create or maintain a nuisance....1106
1094. Abatement of....1107
1095. Public nuisance....1107
1096. Private nuisance....1108
1097. Legalized nuisance....1108
1098. License of nuisance....1110
1099. Damages....1111
1100. Liability for public and private acts....1113
1101. Nature of the power of public authorities to suppress nuisances....1113
1102. The same subject continued—A police power....1114
1103. Abatement of nuisances by destruction of property....1114
1104. The same subject continued—Constitutional limitation....1115
1105. Discretion of municipal bodies in regulating and abating nuisances....1116
1106. The power of municipal corporations as to declaring what is a nuisance....1116
1107. The extent of the power to abate nuisances....1117
1108. Abatement of decayed and noisome tenement houses....1118
1109. Removal of occupants—Express authority or extraordinary peril....1118
1110. Power to define nuisances not absolute....1119
1111. The same subject continued....1119
1112. Limitation of power to define nuisances further illustrated....1120
1113. Municipality confined to mode prescribed in the charter or statute....1121

SECTION PAGE
1114. The same subject continued....1121
1115. Abatement of structures endangering public safety....1122
1116. Person charged with maintaining a nuisance entitled to notice or hearing....1122
1117. Construction of statutes requiring notice to owners to remove nuisances....1123
1118. Proceedings in equity for abatement of nuisances—New Jersey decisions....1124
1119. The same subject continued—Minnesota decisions....1125
1120. The same subject continued—The rule in other states....1126

CHAPTER XXVII.

PUBLIC IMPROVEMENTS.

1121. Public improvements generally....1129
1122. Necessity for public improvements....1129
1123. Cost of improvement....1131
1124. Necessary funds a prerequisite....1132
1125. Passage of ordinance....1132
1126. Petition for improvement....1133
1127. Statutory requirements strictly construed....1138
1128. Conclusiveness of determination of council....1138
1129. Including several streets in one improvement....1139
1130. Notice of proposed improvements....1140
1131. Consent of owners to improvements....1141
1132. What must be specified in an ordinance....1142
1133. Ordinance as a basis of improvements....1143
(a) Necessity of ordinance....1144
(b) Sufficiency of— 1144
(c) Validity of— 1146
(d) Reasonableness of— 1148
(e) Recitals in— 1149
(f) Curative acts 1149
1134. Formality and irregularity in proceedings....1149
1135. Improvement of streets....1150
1136. Grade of streets....1151
1137. Resolution as a basis of improvements....1152
1138. Agreements to repair streets....1155
1139. Railroad bridge across a street not a local improvement....1155
1140. Rule as to repaving, etc., in Pennsylvania....1156
1141. Opening and widening streets....1156
1142. Reconstruction of streets and sidewalks—Second assessment..1157
1143. Paving streets 1157
1144. Paving and repairing distinguished....1158
1145. Repairs of streets, etc....1159
1146. Lawful improvements....1160

SECTION PAGE
1147. Curative legislation 1160
1148. Supervisors of a county ordering improvements in a town. 1160
1149. Sidewalks 1161
1150. Contracts in restraint of right to control or improve streets.. 1162
1151. Discretion of municipal authorities..... 1162
1152. The same subject continued..... 1163
1153. Streets with railways intersecting them..... 1163
1154. Local assessments 1164
1155. Local improvement defined..... 1165
1156. Legality of assessments for local improvements..... 1166
1157. Special taxation in Illinois..... 1167
1158. Constitutionality of assessments for sidewalks..... 1167
1159. Fee in land condemned a part of the cost of an improvement.. 1168
1160. Highways 1169
1161. Opening highways..... 1170
1162. Repairing highways..... 1170
1163. Bridges 1171
1164. Construction of bridges..... 1171
1165. Sewers 1173
1166. Construction of sewers..... 1175
1167. The same subject continued..... 1175
1168. Contracts for construction of sewers..... 1175
1169. Power as to drains and sewers discretionary..... 1176
1170. Local assessments for drains and sewers..... 1177
1171. Drainage continued 1178
1172. Liability of the corporation..... 1179
1173. The same subject continued—Rights in percolating water..... 1180
1174. Massachusetts decisions as to assessment for sewers..... 1181
1175. Use of street for private drain..... 1182
1176. Improvements by street-railway companies..... 1182
1177. The same subject continued..... 1183
1178. Street-railway company bound to repair..... 1183
1179. Lighting of streets..... 1184
1180. Contracts—Construction of..... 1185
1181. The same subject continued—Advertisements for bids, etc..... 1187
1182. Conditions precedent to recover by contractor, etc..... 1188
1183. Indiana decisions as to letting contracts..... 1189
1184. Effect of assignment of a contract..... 1192
1185. When a contract is complete..... 1193
1186. Letting contract after returning bids..... 1193
1187. Discretion of municipal authorities..... 1194
1188. Approval of contract by council—Rejection..... 1195
1189. Repaving of street..... 1195
1190. Title to street essential to jurisdiction..... 1195
1191. Opening and improving streets in one proceeding..... 1196
1192. Description of work in resolution..... 1197
1193. Conclusiveness of assessor's or other official's action..... 1197
1194. Assessment for paving streets and constructing sidewalks..... 1198
1195. When cost of repairing can not be charged to abutters..... 1198
1196. Power of assessment illustrated and limited..... 1199

SECTION PAGE
1197. The same subject continued....1200
1198. Collateral attack of assessments....1201
1199. Suit to restrain assessment....1202
1200. Actions to vacate assessments....1202
1201. Allegations necessary....1203
1202. Evidence—Proof required....1204
1202a. Actions to recover money paid upon illegal assessments....1205
1203. Power to assess abutting owners....1205
1204. The same subject continued....1206
1205. Rule in Texas as to homestead....1206
1206. Liability of the corporation for negligence....1207
1207. The same subject continued....1208
1208. Damages for improper construction....1208
1209. The same subject continued—Constitutional provisions....1209
1210. Damages from defective streets....1210
1211. Measure of damages....1210
1212. Offset against damages....1211
1213. Unauthorized modification of contract....1212
1214. Rights of abutters....1213
1215. Interest of abutters in streets....1214
1216. Liability of corporation for consequential injuries....1215
1217. Flowage of surface water from streets....1216
1218. The same subject continued....1217
1219. Flowage of water by construction of a levee....1218
1220. Damages for change of grade....1218
1221. The same subject continued—Connecticut rule....1221
1222. The same subject continued—"Damage" clause in constitutions....1222
1223. The same subject continued—Measure of damages....1222
1224. Damages by change of grade further considered....1222
1225. The same subject continued—Common-law action....1223
1226. Estoppel of landowner....1224
1227. Actions by abutters—Pleading, etc....1225
1228. Questions for the jury....1226

CHAPTER XXVIII.

LOCAL OR SPECIAL ASSESSMENTS.

1228a. Special assessments defined—Nature of....1230
1229. Express legislative authority requisite....1232
1230. A continuing power....1233
1231. Purposes for assessment illustrated....1233
1232. Decision of council conclusive....1235
1233. Preliminary steps to valid assessment....1235
(a) The ordinance....1236
(b) Petition for improvement....1236
(c) Notice of improvement....1236

SECTION PAGE
(d) What record must show....1237
(e) Cost of improvement....1240
(f) Drawings and specifications....1240
(g) Compliance with preliminaries....1240
1234. Notice of improvement....1240
1235. Hearing of property owners....1242
1236. What property assessable....1243
(a) Property enumerated in statute....1243
(b) Must be abutting property....1243
(c) Must be on property benefited....1243
(d) Unplatted or unsubdivided property....1244
(e) Public property not subject....1244
(f) Abutting property for lateral improvements....1245
(g) Property at termination of street....1245
(h) Part of undivided tract may be....1245
(i) Property on extended street....1246
(j) Title not involved....1246
(k) Improvements on two streets not assessable on one....1246
1237. Exempt property liable to special assessments....1246
1238. Assessments against elevated street railways....1248
1239. Assessments against railroad right of way....1248
1240. Assessment districts....1252
1241. Same subject continued....1253
1242. Prescribed formalities must be strictly followed....1254
1243. Same subject continued....1255
1244. Ordinance or resolution....1256
1245. Petition....1257
1246. Same subject continued....1258
1247. Description of improvements and property....1259
1248. Delegation of matters of detail....1261
1249. Personal liability of landowner....1261
1250. Recovery of money paid on illegal assessments....1263
1251. Same subject continued....1264
1252. Same subject continued—"Coercion in law"....1265
1253. Apportionment of assessment....1266
(a) Assessment only to extent of benefits....1266
(b) Excess over benefits to be paid by city....1266
(c) Where costs in some blocks greater than in others....1266
(d) Equality must be basis of assessment....1267
(e) Frontage rule....1267
(f) Apportionment by superficial area....1270
(g) Rule in absence of statutory mode....1271
(h) Apportionment between city and property owners....1271
(i) Both sides of street must be assessed....1272
(j) City can not subdivide property, etc....1272
1254. Report of commissioners—When conclusive....1273
1255. Objections to special assessment....1274
(a) Necessity of filing....1274
(b) When objections are to be made....1274
(c) Sufficiency of objections....1274

SECTION PAGE
(d) When objection sustained....1276
(e) When objection not sustained....1276
(f) Failure to appeal....1276
(g) Waiver of defect in notice....1276
1256. Confirmation of assessment....1277
(a) Want of notice....1277
(b) Jurisdiction to confirm....1277
(c) Evidence on hearing of confirmation....1277
(d) Judgments—May be separate....1277
(e) Collateral attack of....1278
1257. Appeal from judgment confirming—Certiorari....1278
(a) Limitation of time....1278
(b) Effect of appeal....1279
(c) Presumption on appeal....1279
(d) What considered on appeal....1279
1258. Remedy of property owner....1280
(a) By appeal....1280
(b) Remedy in equity....1280
(c) Remedy by statute....1281
(d) Remedy may be lost....1282
(e) Tender—Jury trial....1282
1259. Defenses when available and when not available....1282
1260. Assessments enjoined, when....1284
1261. Estoppel....1285
1262. Reassessment—When made....1286
1263. Injunction against illegal assessments....1287
1264. Evidence in matters of special assessment....1289
(a) In application for judgment....1289
(b) Presumptions....1289
(c) Burden of proof....1289
(d) Certificate of clerk....1290
1265. General principles as to validity of assessments....1290
1266. Special assessments held valid....1293
1267. Special assessments held invalid....1295
1268. Curative acts....1298
1269. Benefits—What are—How determined....1299
(a) What are benefits....1299
(b) Method of ascertaining....1299
(c) Assessment not to exceed benefit....1299
(d) Review of benefits by courts....1300
1270. Abutting owner and property—Liability....1300
1271. Legislative power with reference to assessments....1301
1272. Collateral attack of assessment....1303
1273. Lien of special assessment....1304
1274. Recovery of money paid on illegal assessments....1304
1275. Liability of city in special assessments....1305
1276. Miscellaneous matters relating to special assessment....1307
(a) Repaving and repairs....1307
(b) Sale in special assessments....1307
(c) Double taxation....1307

SECTION PAGE
(d) Deposit of bonds by contractor....1308
(e) Stay of improvement—Effect of....1308
(f) Payment—By cotenant—By city....1308
(g) Repeal of ordinance—Effect of....1308
(h) What are public improvements....1308
(i) Liability of city in....1308
(j) Liability of abutter....1309
(k) Personal judgment not proper....1309
(l) Reducing assessment....1309

CHAPTER XXIX.

STREETS, ALLEYS, WHARVES, ETC.

1277. Street defined....1313
1278. Alley defined....1313
1279. Sidewalk defined....1314
1280. Methods of acquiring lands for streets and alleys....1314
1281. Dedication must be accepted....1315
1282. Care of streets, alleys, etc....1315
1283. Power to vacate streets....1317
1284. Vacation is discretionary....1320
1285. Abandonment of streets....1321
1286. Discretion in improving unused streets....1321
1287. Use of streets for private purposes....1322
1288. Powers not to be surrendered....1323
1289. Liability of municipality for defective streets....1323
1290. Negligence of municipality in regard to....1324
(a) Ditches in street....1324
(b) Holes in street....1324
(c) Injury at other than street crossing....1325
(d) Liability for others and officers....1325
(e) Not relieved by delegation of work....1325
(f) Negligence generally....1325
(g) Negligence is a question of fact for jury....1326
1291. Contributory negligence....1326
1292. Knowledge of defects—Effect of....1327
1293. Illustrations of contributory negligence....1328
1294. What is not contributory negligence—Illustrations....1329
1295. Contributory negligence a question for the jury....1331
1296. Negligence must be proximate cause of injury....1331
1297. Notice of defective condition of street or sidewalk....1333
1298. Notice may be constructive....1333
1299. To whom notice should be given....1334
1300. When notice is not required....1335
1301. Notice required by statute or charter....1336
1302. Notice inferred from lapse of time....1336
1303. Time sufficient to impute notice for the jury....1337

SECTION PAGE
1304. Sidewalks 1337
(a) Sidewalk defined....1337
(b) Control over and liability in regard to....1338
(c) Presumption as to condition of sidewalk....1338
(d) Duty to erect barriers and signals....1338
(e) Liability for defective sidewalks....1338
(f) Miscellaneous illustrations of liability....1339
(g) Liability of owner for failure to repair....1340
(h) Liability of city for failure to repair....1340
(i) Michigan rule of liability for failure to repair....1341
(j) Liability for accumulations of snow and ice....1342
1305. Right of municipality to indemnity....1344
1306. Power of park board over streets....1345
1307. Extent of municipal control....1346
1308. Franchise in the use of streets....1347
1309. The use of streets and alleys....1347
(a) Power of legislature over....1347
(b) Nature of public interest in....1347
(c) Use by gas company....1348
(d) Use by telephone company....1349
(e) Use by railroad company....1349
(f) Use by street railway company....1350
(g) The right of railways to use of streets limited....1353
(h) Regulating speed of cars....1355
(i) Regulating trains at crossings....1357
1310. Obstructions in streets....1358
(a) Care of streets in regard to obstructions....1358
(b) Presumption as to streets....1359
(c) Notice of obstruction....1359
(d) Negligence in regard to obstructions....1361
(e) Who placed the obstruction not material....1362
(f) Exemption from liability by charter....1362
(g) Nature and character of obstructions....1362
(h) Removal of obstructions....1365
(i) Notice of injury—Statutory....1365
(j) Obstructions sometimes allowable....1367
1311. Removal of shade trees....1368
1312. Surface water....1369
1313. Awnings 1370
1314. Control of wharves....1370
1315. Limit upon liability in control of docks....1372
1316. Reconstruction and repair of sidewalks, streets, etc....1373
(a) Reconstruction 1373
(b) Repair and results of failure....1373
(c) Degree of care required....1374
1317. Sewers 1376
1318. Establishing grade of streets....1378

CHAPTER XXX.

POLICE POWERS.

SECTION		PAGE
1319.	Nature of the police power	1381
1320.	Exercise of police powers by municipal corporations	1383
1321.	Delegation of police power	1383
1322.	Scope of municipal legislation for police regulation	1384
1323.	Limitations on exercise of police power	1384
1324.	Power to regulate	1385
1325.	Power to prohibit	1386
1326.	Regulation is not prohibition	1387
1327.	License	1387
	(a) Scavengers	1387
	(b) Barbers	1387
	(c) Milk dealers	1388
	(d) Removal of kitchen refuse	1388
	(e) Public scales	1388
	(f) Sale of meats and provisions	1388
1328.	Privilege tax	1389
1329.	Regulation of telegraph and telephone lines in streets	1389
1330.	Regulation of dangerous business	1390
1331.	Regulation of buildings—Building permits, etc	1390
1332.	Regulating the removal of dead animals	1392
1333.	Regulating the removal of garbage	1392
1334.	Regulation of fire escapes	1393
1335.	Regulating livery stables	1393
1336.	Abatement of nuisances	1394
1337.	Property destroyed by a mob	1394
1338.	Hawkers and pedlers	1395
1339.	Hackmen, draymen, etc	1396
1340.	Auctioneers	1397
1341.	Book canvassers—Interstate commerce	1399
1342.	Intoxicating liquors	1399
1343.	Hackstands and hotel runners	1401
1344.	Regulation of markets	1402
1345.	Disorderly houses	1403
1346.	Discrimination against non-residents	1404
1347.	Ordinances relating to licenses	1404
1348.	Miscellaneous	1406

CHAPTER XXXI.

MUNICIPAL COURTS AND RECORDS.

(a) MUNICIPAL COURTS.

1349.	Introductory	1408
1350.	The same subject continued—Scope of subject	1409
1351.	Creation—Abolition—Increase of power	1409

SECTION PAGE
1352. The same subject continued....1410
1353. Jurisdiction—Criminal, civil and special....1411
1354. The same subject continued....1412
1355. Summary powers....1413
1356. The same subject continued....1414
1357. The same subject continued—Felonies and misdemeanors....1415
1358. Jurisdictional limitation....1415
1359. The same subject continued—Constitutional limitations....1416
1360. Qualifications of officers—Judges and jurors....1417
1361. Appeals....1418
1362. Method of procedure....1419
1363. The same subject continued....1420

(b) MUNICIPAL RECORDS.

1364. Recording of ordinances....1421
1365. Evidential character—Originals....1421
1366. The same subject continued—Copies....1422
1367. Proof of records—By originals....1423
1368. The same subject continued—By certified copies....1424
1369. Parol evidence....1425
1370. The same subject continued....1426
1371. Amendments....1426
1372. The same subject continued....1427
1373. Right of abstract makers to take transcripts of public records.1428
1374. The same subject continued....1428
1375. Remedial rights....1429

CHAPTER XXXII.

FIREMEN AND POLICEMEN.

1375a. Organization of fire department....1431
1376. Liability of corporation for removal of firemen....1432
1377. Certiorari to review dismissal of firemen....1432
1378. Policemen unknown to the common law....1433
1379. Qualification of officers—Non-partizan boards....1434
1380. Police fund—Legislative control of....1434
1381. Suspension pending trial on charges of misconduct....1435
1382. The tribunal to hear charges....1436
1383. The hearing....1437
1384. Counsel and witnesses....1437
1385. Examining the accused as a witness....1438
1386. Neglect and absence from duty....1439
1387. Violating regulations....1440
1388. Evidence of intoxication....1441
1389. Conduct unbecoming an officer....1442
1390. The same subject continued....1443

SECTION PAGE
1391. Severity of punishment....1443
1392. Review of proceedings by certiorari....1444
1393. Recovery of salary after restoration upon certiorari....1445
1394. City marshals....1446

CHAPTER XXXIII.

WATER AND LIGHTS.

1395. Power of municipality as to water supply....1447
1396. Contracts for water supply....1448
1397. Limitations upon power to contract....1449
1398. Contracts further illustrated....1450
1399. The same subject continued—Monopolies....1451
1400. Construction of contracts....1452
1401. The same subject continued....1452
1402. No exclusive right....1453
1403. Rent of hydrants....1454
1404. Water-works companies under New Jersey statutes....1454
1405. Infringement of riparian rights....1455
1406. The right to waters of a stream....1456
1407. Connecting pipes....1458
1408. Liability of water-works companies....1459
1409. The same subject continued....1459
1410. Water-rates....1460
1411. The same subject continued....1460
1412. Collection of water-rents....1461
1413. Power of municipality to contract for lights....1462
1414. The same subject continued....1463
1415. Authorized contracts illustrated....1464
1416. Unauthorized contracts....1465
1417. Contract for gas lighting construed....1465
1418. The same subject continued....1466
1419. Construction of statutory and charter provisions....1467
1420. The same subject continued....1467

CHAPTER XXXIV.

PUBLIC EDUCATION.

1421. Introductory....1469
1422. Constitutional provisions and state statutes....1470
1423. Legal status of school system....1471
1424. State board and superintendent of education....1471
1425. County superintendents....1472
1426. Change of boundaries of school districts....1473
1427. Presumption of legal organization of district....1474

SECTION PAGE
1428. District school boards....1475
1429. Meetings of district school boards....1477
1430. Prescribing text-books—Rescission of resolution....1478
1431. Power of board of school trustees to contract....1479
1432. Power to require parents to sign and return teacher's report..1480
1433. Fiduciary capacity....1481
1434. Limitation of power....1482
1435. Personal liability of directors....1483
1436. Meetings of district electors—Elections....1484
1437. Term of school officer—Holding over....1486
1438. School fund....1487
1439. The same subject continued—Mandamus to state comptroller..1487
1440. School taxes....1489
1441. School lands....1489
1442. School bonds....1490
1443. School-teacher—Appointment—Contract—Removal....1490
1444. Pupils....1492
1445. Race question in schools....1493
1446. Bible in schools....1494
1447. Actions and defenses....1495

CHAPTER XXXV.

TAXATION.

1448. Taxation defined....1497
1449. Distinction between "tax" and "assessment"....1498
1450. Situs of taxable property....1499
1451. Subjects of taxation....1502
1452. Property subject to taxation....1504
1453. Constitutional restrictions....1505
1454. Implied power of taxation....1506
1455. License fees and taxes on business....1507
1456. The same subject continued—The power strictly construed....1509
1457. Local taxation of transportation companies....1509
1458. Banks....1510
1459. Water companies....1511
1460. Gas companies....1512
1461. Miscellaneous corporations....1512
1462. Apportionment by benefits....1513
1463. Agricultural lands....1514
1464. Taxation after changing the corporate limits....1516
1465. Effect of change of corporate limits....1518
1466. Equality and uniformity....1519
1467. Taxation to pay debts....1521
1468. Limitation of state control....1523
1469. Other limitations of taxing power....1524
1470. Effect of annulling the municipal charter....1525

SECTION PAGE
1471. Mandamus 1526
1472. When mandamus is improper....1528
1473. Proceedings in equity....1529
1474. Execution 1529
1475. Implied obligations to levy tax....1530
1476. Legislative control 1531
1477. Taxing powers 1532
1478. Implied powers 1534
1479. Charter limitations....1534
1480. Taxation to aid private enterprises....1535
1481. Discrimination against non-residents....1537
1482. State control....1537
1483. Execution of charter powers....1538
1484. Voting the tax....1539
1485. Purposes for which the tax may be levied....1542
1486. Proceedings to collect....1543
1487. Application of taxes....1543
1488. Lien of taxes....1544
1489. Exemptions 1544
1490. Exemptions further considered—Whiting v. West Point....1546
1491. Validity of taxes....1548
1492. Invalidity of taxes....1549
1493. Recovery of tax illegally paid....1550
1494. Miscellaneous 1553

CHAPTER XXXVI.

HIGHWAYS.

1495. Highways defined—Different kinds....1556
1496. Modes of creating highways....1557
1497. Dedication of highways—Nature and requisites....1559
1498. Dedication continued—Evidence and presumptions....1560
1499. Conditional or qualified dedication—Revocation....1561
1500. Acceptance of highway—Nature of....1562
1501. Dedication by state—By cities....1563
1502. Dedication continued....1563
1503. Acquiring streets by prescription....1564
1504. Same subject continued—Prescription in various states....1566
1505. Appropriating lands for highways—Damages....1568
1506. Laying out highways....1568
1507. Property exempt from....1569
1508. Private owners' rights....1570
1509. Proceedings to establish highways—Parties—Notice....1571
1510. Petition—Jurisdictional facts....1572
1511. Abandonment of highway by non-user....1573
1512. Discontinuing or vacating highways....1574
1513. Bridges—Part of highway, etc....1575

SECTION PAGE
1514. Bridges over navigable rivers and waters....1575
1515. Bridges between states—Between counties....1576
1516. County bridges....1577
1517. City bridges....1578
1518. Bridges in towns, townships and boroughs....1579
1519. General duty to repair bridges....1580
1520. Abutting owners' rights and easements....1581
1521. Liability for defective construction....1583
1522. Defective highway plan—Liability for....1584
1523. Same subject continued....1585
1524. Duty to keep streets reasonably safe....1586
1525. Primary municipal duty to repair—Abutting owners' liability.1587
1526. Municipal and abutting owners—Statutory liability....1588
1527. Limited liability for acts, etc., of independent contractor....1590
1528. Municipal duty of supervision over others....1591
1529. General municipal liability for neglect of streets....1592
1530. Municipal liability in Michigan....1592
1531. Same subject continued—Rule in other states....1594
1532. Liability for ways which public is invited to use....1596
1533. Municipal recourse against third persons....1598
1534. Liability when defects concur with other causes....1599
1535. Plaintiff's concurring act in cases of danger and exigency....1601
1536. Limited liability in grading streets....1602
1537. Liability in respect to latent defects....1603
1538. Municipal liability for snow and ice....1604
1539. Same subject continued—Notice....1607
1540. Obstructions—Liability for....1608
1541. Obstructions for private convenience....1609
1542. Liability for structures over the street....1611
1543. Municipal liability for fright of horses....1612
1544. Notice of defect in highway....1614
1545. Notice when a question for the jury....1616
1546. When notice is not necessary....1618
1547. To whom notice may be given....1620
1548. Notice of injury....1621
1548a. The same subject continued—Requisites of notice....1622
1549. Illustrations of sufficient notice....1623
1550. Pleading of notice—Evidence of....1624
1551. Evidence in personal injury cases....1626
1552. Instructions to jury....1628
1553. Exercise of care by person injured....1631
1553a. Duty to look and listen....1635
1554. Pedestrians' duty to use crossings and sidewalks....1637
1555. Infirm persons—Duty of caution....1639
1556. Violation of ordinance, etc., as contributory negligence....1641

CHAPTER XXXVII.

MANDAMUS AND QUO WARRANTO.

(a) MANDAMUS.

SECTION		PAGE
1557.	Mandamus—General	1644
1558.	Mandamus where discretion may be exercised	1645
1559.	Reinstatement of officer—Canvass of election	1647
1560.	Premature application—Laches	1647
1561.	Control of official discretion	1648
1562.	Same subject continued	1649
1563.	Same subject continued—Board of assessment	1650
1564.	Same subject continued—Improvement of highways	1650
1565.	Same subject continued—Rebuilding bridge	1651
1565a.	Petition for mandamus	1651
1566.	Relator's right	1652
1567.	Instances illustrating use of mandamus	1653
1568.	Private parties as relators	1654
1569.	Acts in excess of officer's powers	1656
1570.	Michigan decisions—Control of discretion	1656
1571.	Restoration to office	1657
1572.	To restore removed officials	1658
1573.	To obtain possession of office	1659
1574.	To compel performance of judicial functions	1659
1575.	To compel payment of judgment	1660
1576.	To compel audit of claims	1661
1577.	Payment of claims and warrants	1662
1578.	For payment of claims	1663
1579.	To compel payment of claims continued	1664
1580.	To compel public boards to reverse their decisions	1665
1581.	To compel subordinate officials to recognize board	1665
1582.	Removal of obstructions in streets	1666
1583.	Same subject continued—Control of discretion	1667
1584.	To appoint school trustees	1669
1585.	Apportionment, etc., of school moneys	1669
1586.	To restore school funds	1670
1587.	To compel signing of teacher's warrant	1670
1588.	To dissolve injunction against city	1671
1589.	To compel approval of official bond	1672
1590.	To compel execution of tax deed	1673
1591.	To compel approval of contract	1673
1592.	To a county treasurer to refund taxes	1674
1593.	Abatement of public nuisance—Canvass of election—To police commissioners to enforce law	1674
1594.	Obstructions in streets—Contract for improvement	1675
1595.	Title to office and custody of records	1676
1596.	License to sell liquors	1677
1597.	Hearing of complaint	1677

SECTION PAGE
1598. By taxpayer to compel investment of funds.....1678
1599. To levy tax to pay judgment—Previous demand.....1679
1600. Peremptory and alternative.....1680
1601. Practice—Parties 1681
1602. Parties further considered.....1681
1603. Pleading.....1682
1604. Enforcement of public duties.....1683
1605. When mandamus will lie—General.....1684
1606. When mandamus will not lie—General.....1686

(b) QUO WARRANTO.

1607. Scope of proceeding—Title to office—Policeman.....1688
1608. Validity of incorporation—Evidence.....1688
1609. Against municipal officers under void organization.....1689
1610. Usurpation of franchise by city—Parties.....1689
1611. Common council as judge of election.....1690
1612. Mandamus and quo warranto distinguished.....1690
1613. Florida decisions on quo warranto—Council as judges of elections 1691
1614. Practice in Massachusetts—Contest of elections.....1692
1615. Quo warranto against municipal corporation.....1693
1616. Jurisdiction of court.....1693
1617. Election contests—Rules in Colorado.....1694
1618. Title to office—Practice in Michigan.....1695

CHAPTER XXXVIII.

INJUNCTION AND CERTIORARI.

(a) INJUNCTION.

1619. Equitable jurisdiction in municipal affairs.....1696
1620. Rights and remedies of abutting owners.....1697
1621. Restraining power of equity in municipal affairs.....1700
1622. Injunction in matters of special assessment.....1701
1623. To restrain the enforcement of an ordinance.....1702
1624. To restrain the passage of an ordinance.....1703
1625. Restraining the execution of contracts.....1704
1626. Restraining the collection of assessments.....1704
1627. Restraining the vacation or grading of streets.....1705
1628. Restraint of railroads in streets.....1705
1629. When injunction sustained—Illustrations.....1706
1630. When injunction not sustained—Illustrations.....1708

(b) CERTIORARI.

1631. Jurisdiction in.....1711
1632. Miscellaneous 1713

CHAPTER XXXIX.

TAXPAYERS' ACTIONS.

SECTION PAGE
1633. Introductory 1714
1634. Remedies for illegal taxation—In general....1716
1635. Injunctions against taxes....1717
1636. Requisites for injunction....1719
1637. No injunction against irregular taxes....1720
1638. Void taxes....1721
1639. Injunctions against municipal taxation....1721
1640. Taxes on personal property....1722
1641. Taxes on real property....1722
1642. Certiorari 1723
1643. Recoveries by taxpayers of taxes paid....1725
1644. Actions against officers....1726
1645. Misappropriations 1727
1646. Injunction further illustrated....1729
1647. The same subject continued....1730
1647a. Suits by taxpayers generally....1731

CHAPTER XL.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS.

1648. Capacity to sue and be sued—Whether a county is subject to suit 1733
1649. The same subject continued....1735
1650. Service of process....1737
1651. Corporate name in suits....1738
1652. Authority to bind town by appearance....1738
1653. Pleading in suits upon bonds....1740
1654. Bill of interpleader by public officer....1741
1655. Writ of prohibition in behalf of a town—Office of the writ....1742
1656. Execution against municipal corporation....1743
1657. Garnishment of municipal corporations....1744
1658. Presentation of claims—Charter provisions construed....1746
1659. Action by contractor—Remedy by tax-bill when not exclusive..1747
1660. Corporate liability to qui tam action for penalties....1748
1661. Statutory liability for injuries to sheep by dogs—Filing of statement 1748
1662. The same subject continued—Massachusetts decisions....1750
1663. Liability for acts of officers in killing dogs running at large...1751
1664. Suits by the municipality....1752
1665. Suits against the municipality—Defenses....1752
1666. Damages, measure of....1753
1667. Recovery of money wrongfully paid....1754

SECTION PAGE
1668. Limitations against suits....1754
1669. Miscellaneous....1755
1670. Application of estoppel in municipal affairs....1756
1671. When estoppel applies to municipality....1756
1672. When estoppel does not apply to municipality....1758
1673. Estoppel of persons and corporations....1759

CHAPTER XLI.

MUNICIPAL DEPARTMENTS.

1674. Creation of departments....1761
1675. Board of health....1761
1676. Board of education....1763
1677. Board of police—Department of police....1764
1678. Fire department....1767
1678a. Department of parks....1769

CHAPTER XLII.

DAMAGES IN MUNICIPAL MATTERS.

1679. Elements of damages....1771
1680. The measure of damages....1773
1681. Damages to adjoining owners....1774
1682. Damages from change of grade....1776
1683. Damages in case of independent contractor....1778
1684. Damages where city fails to assess....1779
1685. Damages in miscellaneous matters....1780

CHAPTER XLIII

PLEADING.

1686. Necessary allegations....1783
1687. Unnecessary allegations....1785
1688. Sufficiency of allegations....1785
1689. Insufficiency of allegations....1787
1690. The declaration, complaint, or petition....1788
1691. Bill in chancery—Allegations of....1791
1692. Variance between allegations and proof....1792
1693. Instructions to jury....1793

CHAPTER XLIV.

EVIDENCE.

SECTION PAGE
1694. Admissibility of evidence....1795
1695. Sufficiency of evidence....1799
1696. Burden of proof....1800
1697. Questions of fact are for the jury....1801
1698. Contributory negligence—Evidence of....1803
1699. Record of council—Proof of....1804
1700. Presumptions....1805
1701. Miscellaneous....1805

CHAPTER XLV.

FRANCHISES.

1702. Power to grant franchises—Limited....1807
1703. Franchise may be a contract....1808
1704. Franchises with reference to streets....1808
1705. Grant of exclusive franchises....1809
1706. Validity of franchise....1810
1707. Franchises subject to police power....1811
1708. Revocation, forfeiture and surrender....1811
1709. Acceptance of franchise—Conditions....1813
1710. Franchises to street railways....1813
1711. Miscellaneous....1814

CHAPTER XLVI.

CIVIL SERVICE AND VETERANS ACTS.

(a) CIVIL SERVICE ACTS.

1712. The scope and purpose of civil service laws....1816
1713. Civil service laws—When introduced—New York statute....1817
1714. To whom applicable....1819
1715. Civil service rules and regulations....1820
1716. Appointments—Meaning of, etc....1821
1717. Removal, reasons for....1822
1718. Reinstatement....1823
1719. Miscellaneous provisions....1824
1720. Constitutionality of civil service laws....1825

(b) VETERANS ACTS.

1721. Scope and purpose of acts....1826
1722. Removal and discharge....1828
1723. Applies to subordinates only....1829
1724. Hearing....1829
1725. Miscellaneous....1830

TABLE OF CASES.

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Aaron v. Broilles, 64 Tex. 316, 1097
Abbett v. Board &c., 114 Ind. 61, 9, 1076
Abbott v. City of Mobile, 119 Ala. 595, 1336
v. Mills, 3 Vt. 521, 1559
Abel v. City of Minneapolis, 68 Minn. 89, 1774, 1776
Abell v. Prairie Civil Tp. &c., 4 Ind. App. 599, 1750
Abells v. City of Syracuse, 40 N. Y. S. 233, 739
Abendroth v. Manhattan R. Co., 122 N. Y. 1, 1581
Aberdeen v. Blackmar, 6 Hill 324, 1599
Abernathy v. Phifer, 84 N. C. 711, 941
Abram v. State, 28 S. W. 818, 499
Abrams v. Carlisle, 18 S. C. 242, 334
Ackerman v. Huff, 71 Tex. 317, 694
Ackley School Dist. v. Hall, 113 U. S. 135, 1000, 1018
Adams v. Brenan, 177 Ill. 194, 734, 1699, 1701, 1764
v. Chicago R. Co., 39 Minn. 286, 1214, 1582
v. City of Beloit, 105 Wis. 363, 1554
v. City of Modesto, 131 Cal. 501, 928
v. City of Oshkosh, 71 Wis. 49, 829, 1609, 1619
v. City of Salina, 58 Kan. 246, 800
v. City of Shelbyville, 154 Ind. 467, 1150, 1243, 1266, 1302, 1304, 1707
v. Crowell, 40 Vt. 31, 366
v. Fisher, 23 Tex. 651, 1206
v. Green, 74 Mo. App. 125, 1301
v. Hyde, 27 Vt. 221, 1540
v. Inhabitants &c., 147 Mass. 440, 1586, 1606, 1616
v. Logan Co., 11 Ill. 336, 757
v. Mack, 3 N. H. 493, 1421, 1422
v. Mayor &c., 2 Head 363, 1508, 1521
v. Memphis &c. R. Co., 2 Coldw. 645, 977
v. Ohio Falls Car Co., 131 Ind. 375, 585, 1322
v. Paige, 7 Pick. 542, 211
v. Pratt, 109 Mass. 59, 365
v. President &c., 1 Greenl. 361, 7, 142, 148, 342, 776, 965
v. Richardson, 43 N. H. 212, 221, 335
v. Saratoga &c. R. Co., 11 Barb. (N. Y.) 414, 453, 1565
v. Stanyon, 24 N. H. 405, 348, 367
v. State, 82 Ill. 132, 864, 1483
v. State, 65 N. H. 188, 1484
v. Tator, 42 Hun 384, 197
v. Thomas, 11 Ky. L. 701, 1492
v. Tyler, 121 Mass. 380, 1745
Adams Co. v. City of Quincy, 130 Ill. 566, 511, 1145, 1245
Adamson v. Nassau Electric R. Co., 33 N. Y. S. 732, 89 Hun 261, 1811, 1349
Adcock v. City of Chicago, 160 Ill. 611, 1237, 1278
Addis v. City of Pittsburgh, 85 Pa. St. 379, 260
Addison v. Saulnier, 19 Cal. 82, 1508
Addy v. City of Janesville, 70 Wis. 401, 1180
Addyston Pipe &c. Co. v. City of Corry, 197 Pa. St. 41, 741, 874
Adkins v. Brewer, 3 Cow. 206, 335
v. Quest, 79 Mo. App. 36, 1259, 1260
Adleman v. Pierce, 55 Pac. 658, 751
Adley v. Reeves, 2 Mau. & S. 53, 528, 531
Adrian Water-works v. City of Adrian, 64 Mich. 584, 1453
Adsell v. Inhabitants &c., 3 Gray 526, 362
Adsit v. Brady, 4 Hill 630, 222, 224
Ætna L. Ins. Co. v. City of Burrton, 75 Fed. 962, 609
v. Mabbett, 18 Wis. 698, 321
Ætna Mills v. Inhabitants &c., 126 Mass. 422, 695
Affeld v. City of Detroit, 112 Mich. 560, 916
Agawam Nat'l Bank v. Inhabitants &c., 128 Mass. 503, 233, 237
Agnew v. City of Corunna, 55 Mich. 428, 820, 1613
v. Beall, 124 Ill. 312, 194, 659, 662
Agricultural Branch R. Co. v. Winchester, 13 Allen 29, 994
Ahern v. Steele, 115 N. Y. 203, 1095
Ah You, In re, 82 Cal. 339, 1415, 1417
Ah You, In re, 88 Cal. 99, 1404
Aiken Co. v. Murray, 35 S. C. 508, 915
Aikman v. School Dist., 27 Kan. 129, 1485
Aitcheson v. Huebner, 90 Mich. 643, 1673
Akers v. Mayor &c., 35 N. Y. S. 1099, 1326, 1335
Akin v. Akin, 78 Ga. 24, 786
Akron v. Chamberlain Co., 34 Ohio St. 328, 1776
Alabama &c. R. Co. v. City of Bessemer, 113 Ala. 668, 605
v. Kidd, 29 Ala. 221, 4, 6
Alamango v. Albany Co., 25 Hun 551, 805
Albany v. Abbott, 61 N. H. 157, 869
v. Cunliff, 2 N. Y. 165, 253
v. Savannah &c. R. Co., 71 Ga. 158, 1503
Albany &c. Bank v. City of Albany, 92 N. Y. 363, 240, 257, 715
Albany &c. Mining Co. v. Auditor-General, 37 Mich. 391, 1288, 1717
Albany &c. R. Co. v. Brownell, 24 N. Y. 345, 680
Albee v. Ward, 8 Mass. 79, 335
Alberger v. Mayor &c., 64 Md. 1, 1194, 1242

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Albers' Petition, In re, 113 Mich. 640, 1318
Albrecht v. City of St. Paul, 47 Minn. 531, 1202
Albrittin v. Mayor &c., 60 Ala. 486, 85, 86, 265, 1324, 1614, 1616
Albro v. City of Fall River, 175 Mass. 590, 1782
Albuquerque v. Zeiger, 5 N. M. 674, 1256
Alcorn v. Hamer, 38 Miss. 652, 61, 83, 1270
v. Philadelphia, 112 Pa. St. 494, 1233
Alden v. Alameda Co., 43 Cal. 270, 1527
v. City of Minneapolis, 24 Minn. 254, 680, 1215
v. City of Springfield, 121 Mass. 27, 1291
v. Roundsville, 7 Met. 218, 1485
Alderman v. School Directors, 91 Ill. 179, 1691
Alderson v. Commissioners, 31 W. Va. 633, 381
Alderton v. Binder, 81 Mich. 133, 1655
Aldrich v. Collins, 3 S. D. 154, 631
Aldridge v. Tuscumbia R. Co., 2 St. & P. 199, 685
Aleppo School District's Appeal, 96 Pa. St. 76, 1474
Alesandro Irr. Dist. v. Savings &c. Co., 88 Fed. 928, 1030
Alexander v. Bennett, 60 N. Y. 204, 1410
v. City of Big Rapids, 76 Mich. 282, 1586
v. City of Milwaukee, 16 Wis. 264, 1216, 1222
v. City of Vicksburg, 68 Miss. 564, 797
v. Johnson, 144 Ind. 82, 1700
v. Oneida Co., 76 Wis. 56, 966
v. People, 7 Colo. 155, 374, 556
v. Town Council &c., 54 Miss. 659, 1392
v. Town of New Castle, 115 Ind. 51, 228
Alexander Ave., In re, 17 N. Y. S. 933, 1249, 1251
Alexandria v. Fairfax, 95 U. S. 774, 1737
Alexandria Coal Co. v. Swann, 5 How. 83, 662
Alexandria &c. R. Co. v. Alexandria &c. R. Co., 75 Va. 780, 684
Alford v. City of Dallas, 35 S. W. 816, 1286
v. Jones, 71 Tex. 519, 430
Alger v. City of Lowell, 3 Allen 402, 1597, 1641
v. Curry, 40 Vt. 437, 344, 361
v. Inhabitants &c., 119 Mass. 77, 1727
Allaire v. Hartshorne, 21 N. J. L. 665, 1019
Allee v. Reece, 39 Fed. 341, 220, 334
Alleghany City, Appeal of, 41 Pa. St. 60, 1544
Alleghany City v. McClurkin, 14 Pa. St. 81, 239, 649
v. People's Nat'l Gas &c. Co., 172 Pa. St. 632, 1347
Allegheny City v. Western &c. R. Co., 138 Pa. St. 375, 1251
Allegheny Co. v. Gibson, 90 Pa. St. 397, 799, 800, 1394
v. Watt, 3 Pa. St. 462, 1073
Allen v. Archer, 49 Maine 346, 347, 364, 1727
v. Baltimore &c. R. Co., 114 U. S. 311, 1717
v. Borough of Du Bois, 181 Pa. St. 184, 1331
v. City of Burlington, 45 Vt. 202, 343, 344, 363, 871, 1551
Allen v. City of Chippewa Falls, 52 Wis. 430, 1216
v. City of Davenport, 107 Iowa 90, 490, 540, 725, 735, 879, 881, 1030, 1151, 1231, 1298, 1300, 1301, 1376, 1701
v. City of Galveston, 51 Tex. 302, 260, 1206, 1254
v. City of Portland, 35 Or. 420, 720, 1134, 1135, 1259, 1284
v. Commonwealth, 83 Va. 94, 223
v. Cook, 21 R. I. 525, 1344, 1361
v. Dallas &c. R. Co., 3 Woods 316, 1027
v. District Tp., 70 Iowa 434, 1473
v. Drew, 44 Vt. 174, 1148, 1234, 1268
v. Gray, 11 Conn. 95, 536
v. Hostetter, 16 Ind. 15, 420
v. Inhabitants &c., 60 Maine 124, 559, 979, 1536
v. Inhabitants &c., 19 Pick. 485, 576, 867
v. Intendant &c., 89 Ala. 641, 855, 856
v. Jones, 47 Ind. 438, 684
v. Louisiana, 103 U. S. 80, 986
v. Mayor &c., 53 N. J. L. 522, 1582
v. Metcalf, 17 Pick. 208, 1483
v. People, 84 Ill. 502, 115
v. State, 61 Ind. 268, 327
v. Watts, 88 Ala. 497, 967
Allentown v. Henry, 73 Pa. St. 404, 1232, 1235
Allentown School Dist. v. Derr, 115 Pa. St. 439, 1017
Alley v. Board &c., 76 Ill. 101, 990
v. City of Lebanon, 146 Ind. 125, 1280
v. Inhabitants &c., 53 Maine 446, 1542
Alline v. Le Mars City, 71 Iowa 654, 1637
Allison v. Louisville &c. R. Co., 9 Bush 247, 651
Allman v. District of Columbia, 3 App. D. C. 8, 1243
Allwood v. Cowen, 111 Ill. 481, 1699
Almand v. Atlanta &c. R. Co., 108 Ga. 417, 71, 586
Almy v. Coggeshall, 19 R. I. 549, 1777
Altgelt v. City of San Antonio, 17 S. W. 75, 1451, 1512
Altman v. City of Dubuque, 111 Iowa 105, 481, 1151
Alton v. Mulledy, 21 Ill. 76, 210
Altvater v. Mayor &c., 31 Md. 462, 264
Alves' Ex'r v. Town of Henderson, 16 B. Mon. 131, 629
Alvis v. Whitney, 43 Ind. 83, 1519
Alvord v. City of Syracuse, 58 N. Y. S. 854, 1273, 1281
v. City of Syracuse, 163 N. Y. 158, 1285, 1303
v. Syracuse &c. Bank, 98 N. Y. 599, 1023
Amador Co. v. Kennedy, 70 Cal. 458, 602
Amberson Ave., In re, 179 Pa. St. 634, 1299
Ambrose v. State, 6 Ind. 351, 607
American File Co. v. Garrett, 110 U. S. 288, 1031
American Ins. Co. v. Stratton, 59 Iowa 696, 216, 217
American &c. Ins. Co. v. Fyler, 60 Conn. 448, 1488
American Print Works v. Lawrence, 21 N. J. L. 248, 673, 1114
American Salt Co. v. Heidenheimer, 80 Tex. 344, 1028, 1029
American &c. Tel. Co. v. Hess, 125 N. Y. 641, 1390, 1581

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

American Union Ex. Co. v. City of St. Joseph, 66 Mo. 675, 1520
Amery v. City of Keokuk, 72 Iowa 701, 1238, 1268
Ames v. City of San Francisco, 76 Cal. 325, 935, 940
v. Lake Superior &c. Co., 21 Minn. 241, 697
Amesbury v. Bowditch &c. Ins. Co., 6 Gray 596, 519
Amesbury &c. Co. v. Inhabitants &c., 17 Mass. 461, 1725
Amey v. Mayor &c., 24 How. 364, 491, 1421
v. Mayor &c., 14 Ohio St. 472, 1535
Amherst v. Hollis, 9 N. H. 107, 1042
Amos v. City of Fond du Lac, 46 Wis. 693, 1589
Amy v. Dubuque, 98 U. S. 470, 1020
v. Selma, 77 Ala. 103, 412, 452, 453
v. Smith, 1 Litt. 326, 137
v. Supervisors, 11 Wall. 136, 222
Anderson, In re, 47 Hun 203, 1186
Anderson v. Baker, 98 Ind. 587, 1573
v. Baker, 23 Md. 531, 369
v. Bitzer, 20 Ky. L. 1450, 1268, 1289
v. Caldwell, 91 Ind. 451, 698
v. City Council &c., 58 N. J. L. 515, 470
v. City of Bath, 42 Maine 346, 1332
v. City of Detroit, 124 Mich. 471, 1686
v. City of Mayfield, 93 Ky. 230, 928
v. City of Wellington, 40 Kan. 173, 98, 99, 503, 605
v. Equitable Gas Light Co., 12 Daly 462, 572
v. Kerns Draining Co., 14 Ind. 199, 689, 1084
v. Mayor &c., 8 Houst. 516, 1180
v. Mayor &c., 2 Penn. 28, 1362, 1364
v. Meeker Co., 46 Minn. 237, 1575
v. Orient &c. Co., 88 Iowa 579, 881
v. Pemberton, 89 Mo. 61, 1571
v. Prairie School Tp., 1 Ind. App. 34, 1490
v. Santa Anna Tp., 116 U. S. 356, 643, 1031
v. Tuberville, 6 Coldw. 150, 685
Anderson Co. v. Houston &c. R. Co., 52 Tex. 228, 1001
Anderson Co. Com'rs v. Beal, 113 U. S. 227, 256, 998, 1001, 1004, 1007, 1023, 1757
Anderton v. City of Milwaukee, 82 Wis. 279, 557, 558
Andes v. Ely, 158 U. S. 312, 1004
Andover v. Grafton, 7 N. H. 298, 868, 869
Andress v. Board &c., 19 Mich. 332, 1485
Andrew v. Settle, 6 Ohio Dec. 160, 1286
Andrews, Ex parte, 18 Cal. 678, 1079
Andrews v. Estes, 11 Maine 267, 217
v. Inhabitants &c., 110 Mass. 214, 353, 365
v. Insurance Co., 37 Maine 256, 97, 468, 494
v. King, 77 Maine 224, 1436
v. People, 158 Ill. 477, 1145
v. Portland, 79 Maine 484, 172, 213
v. Pratt, 44 Cal. 309, 178, 615
v. School Dist., 37 Minn. 96, 632, 1480, 1482
v. United States, 2 Story 202, 175
Angel v. Town of Spring City, 53 S. W. 191, 63
Answer of Justices, 122 Mass. 600, 1420
Anthony v. Inhabitants &c., 1 Met. 284, 251, 641
Anthony v. Jasper Co., 101 U. S. 693, 646, 999, 1001, 1015
v. State, 29 Ala. 27, 538
v. Village of Glen Falls, 38 N. Y. S. 536, 1344
v. Williams, 47 Ind. 565, 1191
Antonio v. Mehaffy, 96 U. S. 312, 1006
Apgar v. Hayward, 110 N. Y. 225, 229, 230
Apple v. Board &c., 127 Ind. 553, 1580
Appleby v. Mayor &c., 15 How. Pr. 428, 210, 251, 253, 647
Arbegust v. City of Louisville, 2 Bush 271, 1515, 1517
Arberry v. Beavers, 6 Tex. 457, 224
Arbuckle-Ryan Co. v. City of Grand Ledge, 122 Mich. 491, 882, 1184, 1800
Archer v. Hart, 5 Fla. 234, 312
v. Noble, 3 Greenl. 418, 330, 332
Ardey v. City of Dallas, 13 Tex. Civ. App. 442, 1286, 1295
Arey v. City of Newton, 148 Mass. 598, 1638, 1642
Argenti v. City of San Francisco, 16 Cal. 255, 239, 240, 241, 260, 618, 630, 638, 649, 653, 1306
Argo v. Barthand, 80 Ind. 63, 1201
Argus v. Village of Sturgis, 86 Mich. 344, 1631
Argus Co. v. Mayor &c., 55 N. Y. 495, 261
Arimond v. Green Bay &c. Canal Co., 31 Wis. 316, 1218
Arkadelphia v. Windham, 49 Ark. 139, 9, 814, 1594
Arkadelphia Lumber Co. v. Arkadelphia, 56 Ark. 370, 465, 1424
Arkansas Val. &c. Co. v. Belden Mining Co., 127 U. S. 379, 1191
Arlington v. Merricke, 2 Saund. 411, 326
Armington v. Town of Barnett, 15 Vt. 745, 674
Armstrong v. Board &c., 4 Blackf. 208, 757
v. Brown, 20 Ky. L. 1766, 513, 612
v. City of Topeka, 36 Kan. 432, 401
v. Ogden City, 12 Utah 476, 1142, 1281
v. School Dist., 19 Mo. App. 462, 1492
v. School Dist., 28 Mo. App. 169, 1491
v. Tama Co., 34 Iowa 309, 1064
v. Town of Ackley, 71 Iowa 76, 1618, 1626
v. Truitt, 53 Ark. 287, 944, 945
v. Village of Ft. Edward, 159 N. Y. 315, 973
Armstrong Co. v. Brinton, 47 Pa. St. 367, 985
Arnold v. Blaker, L. R. 6 Q. B. 433, 1561
v. City of Cambridge, 106 Mass. 352, 1253
v. City of Ft. Dodge, 111 Iowa 152, 730, 1243, 1291
v. City of St. Louis, 152 Mo. 173, 1790
v. Holbrook, L. R. 8 Q. B. 96, 1561
v. Hudson River R. Co., 55 N. Y. 661, 674, 676
v. Mayor &c., 21 R. I. 15, 717, 737
v. Mayor &c., 4 Man. & G. 860, 261
v. Styles, 2 Blackf. 391, 420
v. Village of Decatur, 29 Mich. 77, 695
Arnoult v. City of New Orleans, 11 La. An. 54, 384
Arthur v. City of Charleston, 46 W. Va. 88, 1802
Artz v. Chicago &c. R. Co., 34 Iowa 153, 659

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Asbell v. Mayor &c., 80 Ga. 503, 287, 1437
Ash v. City of Independence, 79 Mo. App. 70, 744
v. People, 11 Mich. 347, 1403, 1508
Ashby v. White, 2 Ld. Raym. 938; s. c. 1 Salk. 19, 221, 222, 225
Asher v. Texas, 128 U. S. 129, 1399
Ashley v. Board &c., 16 U. S. App. 656; s. c. 60 Fed. 55; 8 C. C. A. 455, 66, 69, 70, 1002, 1018, 1029, 1757
v. City of Port Huron, 35 Mich. 296, 791, 1215, 1217
v. Town of Calliope, 71 Iowa 466, 58
Ashman v. Pulaski Co., 73 Fed. 927, 1006
Ashton v. City of Newton, 134 Mass. 507, 1598
v. City of Rochester, 14 N. Y. S. 855, 304
Ashuelot Nat'l Bank v. Lyon Co., 81 Fed. 127, 878
v. School Dist., 41 Fed. 514, 1490
Ashuelot R. Co. v. Elliott, 57 N. H. 397, 1020
Askew v. Hale Co., 54 Ala. 639, 7, 9, 13, 14, 434, 441, 774
Askin v. London &c., 1 Up. Can. Q. B. 292, 174
Askins v. Commonwealth, 1 Duv. 275, 457
Aspinwall v. Board &c., 22 How. 364, 103, 625, 982, 996, 997, 1524
Astor, In re, 53 N. Y. 617, 1234
Astor v. Hoyt, 5 Wend. 603, 693
v. Mayor &c., 62 N. Y. 567, 294
v. Miller, 2 Paige 68, 1571
Atchison v. Bartholow, 4 Kan. 124, 54, 55
Atchison &c. R. Co. v. Board &c., 25 Kan. 261, 991
v. Commissioners, 17 Kan. 29, 992
v. Missouri &c. R. Co., 31 Kan. 660, 1353
v. Peterson, 5 Kan. App. 103, 1249, 1303
v. Wilhelm, 33 Kan. 206, 1535
Athearn v. Independent Dist. &c., 82 Iowa 686, 281
Atkins v. Phillips, 26 Fla. 281, 476
v. Town of Randolph, 31 Vt. 226, 1538
Atkinson v. Bowman, 42 Hun 404, 19
v. Goodrich Transp. Co., 60 Wis. 141, 499
v. Marietta &c. R. Co., 15 Ohio St. 21, 54
v. Wykoff, 58 Mo. App. 86, 1317
Atlantic &c. Tel. Co. v. Chicago &c. R. Co., 6 Biss. 158, 681
Atlantic City &c. Co. v. Atlantic City &c. Co., 15 Atl. 581, 561
Atlantic City Water-works Co. v. Atlantic City, 39 N. J. Eq. 367, 1448
v. Atlantic City, 48 N. J. L. 378, 1465
v. Consumers' Water Co., 44 N. J. Eq. 427, 1455
v. Read, 50 N. J. L. 665, 233, 1449, 1450
Atlas Bank v. Brownell, 9 R. I. 168, 321
Attaway v. Mayor &c., 68 Ga. 704, 1075
Attorney-General v. Barstow, 4 Wis. 567, 381
v. Board &c., 64 Mich. 607, 381, 433, 1665
v. Boards &c., 120 Mich. 357, 1686
v. Brown, 1 Wis. 513, 106, 150
v. Cahill, 169 Mass. 18, 209
v. Cain, 84 Mich. 223, 1688
Attorney-General v. Chicago &c. R. Co., 35 Wis. 425, 54
v. City of Boston, 123 Mass. 460, 124, 651
v. City of Cambridge, 16 Gray 247, 1177
v. City of Eau Claire, 37 Wis. 400, 559, 610, 666
v. City of Salem, 103 Mass. 138, 124
v. Common Council &c., 112 Mich. 145, 209
v. Connors, 27 Fla. 329, 1446
v. Corporation of Shrewsbury, 6 Beav. 220, 123, 446
v. Crocker, 138 Mass. 214, 195, 351, 352, 365
v. Ely, 4 Wis. 420, 152, 377
v. Fitzpatrick, 2 Wis. 542, 436
v. Heishon, 18 N. J. Eq. 410, 1105
v. Lombard &c. R. Co., 10 Phila. 352, 586
v. Manderson, 12 Jur. 383, 325
v. Marston, 66 N. H. 485, 185
v. Mayor &c., 1 Bligh 312, 651
v. Mayor &c., 2 Mylne & Cr. 406, 667
v. McCabe, 172 Mass. 147, 1763
v. Metropolitan R. Co., 125 Mass. 515, 591, 682
v. Pingree, 120 Mich. 550, 609
v. Railroad Companies, 35 Wis. 425, 106
v. Rice, 64 Mich. 385, 62, 415
v. Shepard, 62 N. H. 383, 117, 118, 162, 294
v. Simonds, 111 Mass. 256, 273, 353, 355
v. Stevens, 1 Saxt. Ch. 369, 634
v. Town of Dover, 62 N. J. L. 138, 70
v. Utica Ins. Co., 2 Johns. Ch. 371, 296
v. Varnum, 167 Mass. 477, 171
v. Williams, 174 Mass. 476, 1782
v. Wilson, 1 Craig & Ph. 1, 651
Attorney-General's Opinions, 448, 538, 869, 870
Atwater v. Inhabitants &c., 6 Conn. 223, 142, 341, 965
v. Trustees &c., 124 N. Y. 602, 801, 823
Atwell v. Zeluff, 26 Mich. 118, 1552, 1725
Atwood v. Austin, 16 Johns. 180, 278
v. Partree, 56 Conn. 80, 1675
v. Town of Lincoln, 44 Vt. 332, 363
Auburn &c. Plank Road Co. v. Douglass, 9 N. Y. 444, 568
Auchenbach v. Seibert, 120 Pa. St. 159, 156
Auditor-General v. Board &c., 89 Mich. 552, 418
v. Lake George &c. R. Co., 82 Mich. 426, 192
Auditors v. Benoit, 20 Mich. 176, 197, 213
Auer v. City of Dubuque, 65 Iowa 650, 1239
Augusta Bank v. City of Augusta, 49 Maine 507, 983
Augusta City Council v. Hudson, 88 Ga. 599, 1579
Augusta Factory v. City Council &c., 83 Ga. 734, 623
Augusta &c. R. Co. v. City Council &c., 100 Ga. 701, 586
Aulanier v. Governor, 1 Tex. 653, 196, 1508
Auld v. Walton, 12 La. An. 129, 370
Aurora City v. West, 7 Wall. 82, 1020
Aurora Water Co. v. City of Aurora, 129 Mo. 540, 490

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Austin v. Allen, 6 Wis. 134, 343, 696
v. Colgate, 27 S. W. 896, 1337
v. District Tp. &c., 51 Iowa 102, 897
v. Inhabitants &c., 57 Maine 304, 344, 363
v. Murray, 16 Pick. 121, 100, 505, 508, 1086, 1087
Austrian v. Guy, 21 Fed. 500, 49
Avant v. Flynn, 2 S. D. 153, 593
Avery v. Slack, 19 Wend. 50, 193
v. Stewart, 1 Cush. 496, 362, 364
v. Township Board, 73 Mich. 622, 965, 966
Axt v. Jackson School Tp., 90 Ind. 101, 210
Ayer v. City of Norwich, 39 Conn. 376, 1612
v. Lawrence, 59 N. Y. 192, 651, 825
Ayeridge v. Commissioners, 60 Ga. 404, 106, 122
Ayers v. Hatch, 175 Mass. 489, 203, 1830
Ayres v. Pennsylvania R. Co., 52 N. J. L. 405, 1561
v. Village of Hammondsport, 7 N. Y. S. 174, 1607

B

Baader v. Town of Cullman, 115 Ala. 539, 120
Baar v. Kirby, 118 Mich. 392, 463
Babbage v. Powers, 130 N. Y. 281, 1349
Babbitt v. Selectmen &c., 3 Cush. 530, 668
v. State, 10 Kan. 9, 339
Babcock v. Beaver Creek, 64 Mich. 601, 1551, 1552
v. City of Buffalo, 56 N. Y. 268, 1093, 1110
v. City of Helena, 34 Ark. 499, 88
v. Gifford, 29 Hun 186, 224
v. Hanselman, 56 Mich. 27, 1695
v. Scranton Traction Co., 1 Lack. Leg. N. 223, 463
v. Town of Granville, 44 Vt. 325, 1551, 1723
v. Welsh, 71 Cal. 400, 1574
Babington v. Parish of St. Charles, 27 La. An. 321, 651
Babson v. Inhabitants &c., 101 Mass. 93, 1601
Bachelder v. Epping, 28 N. H. 354, 868
Bachelor v. New Hampton, 60 N. H. 207, 697, 1572
Back v. Carpenter, 29 Kan. 349, 49
Backhaus v. People, 87 Ill. App. 173, 525
Backman v. Charlestown, 42 N. H. 125, 257
Backus v. Lebanon, 11 N. H. 19, 637, 698, 1323
Bacon v. Bacon, 3 Cro. Car. 601, 130
v. City of Antigo, 103 Wis. 10, 930
v. City of Tacoma, 19 Wash. 674, 1662
v. Mayor &c., 86 Ga. 301, 1145, 1268
v. Mayor &c., 105 Ga. 62, 1129, 1235, 1294, 1300
v. Robertson, 18 How. 480, 445, 446
v. Texas, 163 U. S. 207, 1808
Badger v. City of New Orleans, 49 La. An. 804, 926
Badkins v. Robinson, 53 Ga. 613, 1403
Bagg v. City of Detroit, 5 Mich. 336, 1234
Bagwell v. Town of Lawrenceville, 94 Ga. 654, 600
Bailey v. Buell, 59 Barb. 158, 1551
v. City of Cambridge, 174 Mass. 188, 1344
Bailey v. City of Centerville, 108 Iowa 20, 1796
v. Fulton Co., 111 Ga. 313, 792
v. Inhabitants &c., 126 Mass. 416, 688
v. Lawrence Co., 2 S. Dak. 533, 1652
v. Mayor &c., 3 Hill 531, 4, 6, 222, 437, 459, 762, 779, 783, 809, 811, 1113, 1546
v. State, 30 Neb. 855, 540, 1422
v. Winn, 101 Mo. 649, 1412
Baily v. Commonwealth (Pa.), 10 Atl. 764, 903
v. Commonwealth, 20 W. N. C. (Pa.) 221, 1035
Bainbridge v. Downie, 6 Mass. 253, 216
Baird v. Daly, 68 N. Y. 547, 1627
v. Todd, 27 Neb. 782, 884
Baker v. Board, 40 Iowa 226, 556
v. Chambles, 4 Greene 428, 217
v. City of Boston, 12 Pick. 184, 823, 1093, 1112, 1121
v. City of Cincinnati, 11 Ohio St. 534, 1508, 1521
v. City of Grand Rapids, 111 Mich. 447, 1329, 1336, 1339, 1377
v. City of Lexington, 21 Ky. L. 809, 518, 520, 527
v. City of Portland, 58 Maine 199, 1641
v. City of Seattle, 2 Wash. 576, 892, 916
v. City of Utica, 19 N. Y. 326, 175
v. City of Washington, 7 D. C. 134, 690
v. Cushman, 127 Mass. 105, 301, 302
v. Inhabitants &c., 13 Maine 74, 668, 866
v. Johnson, 41 Maine 15, 960
v. Panola Co., 30 Tex. 86, 1551
v. Preston, 1 Gilm. 235, 211, 324
v. Schofield, 58 Ga. 182, 491, 1425
v. Shephard, 24 N. H. 208, 346, 361
v. Tobin, 40 Ind. 310, 1191
v. Town of Normal, 81 Ill. 108, 519
v. Village of Magnon, 9 Ill. App. 155, 541
Balch v. City of Utica, 5 N. Y. S. 513, 1393, 1394, 1755
v. County Com'rs, 103 Mass. 106, 689
Balcom, In re, 58 N. Y. S. 1097, 1825, 1830
Balcombe v. Northrup, 9 Minn. 172, 217
Baldwin v. Carter, 15 Johns. 496, 278
v. City Council, 53 Ala. 437, 1533
v. City of Bangor, 36 Maine 518, 684
v. City of Chicago, 68 Ill. 418, 542
v. City of Elizabeth, 42 N. J. Eq. 11, 564
v. City of Oswego, 1 Abb. Ct. App. Dec. 62, 722
v. City of Springfield, 141 Mo. 205, 1373
v. Franks, 120 U. S. 678, 140
v. Green, 10 Mo. 410, 97, 468, 494
v. Marshall, 2 Humph. 116, 228
v. Mayor &c., 42 Barb. 549, 1522
v. Murphy, 82 Ill. 485, 523
v. Nickerson, 3 Wyo. 208, 1486
v. Smith, 82 Ill. 162, 522
v. Town of North Branford, 32 Conn. 49, 343, 345, 363, 364
v. Tucker, 16 Fla. 258, 1722
Bales v. Pidgeon, 129 Ind. 548, 1566
Balfe v. Lammers, 109 Ind. 347, 1288
Ball v. Fagg, 67 Mo. 481, 169, 540, 1425
v. Town of Woodbine, 61 Iowa 83, 808
Ballard v. Davis, 31 Miss. 525, 294, 1485
v. Gay, 108 N. C. 544, 1419

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Ballard v. Tomlinson, L. R. 29 Ch. D. 115, 809
Ballerino v. Mason, 83 Cal. 447, 230
Ballinger v. New York &c. R. Co., 23 N. Y. 42, 823
Baltimore &c. Co. v. Nesbit, 10 How. 395, 700
Baltimore &c. R. Co. v. City of Seymour, 154 Ind. 17, 1806
v. Fifth Baptist Church, 137 U. S. 568, 1111
v. North, 103 Ind. 486, 679
Baltimore Trust &c. Co. v. Mayor &c., 64 Fed. 153, 510, 522
Baltimore Tpk. Co., In re, 5 Binn. 481, 1540
Bamber v. City of Rochester, 63 How. Pr. 103, 1097
Bambrick v. Campbell, 37 Mo. App. 460, 479
Bancroft v. City of Cambridge, 126 Mass. 438, 689
v. Inhabitants &c., 18 Pick. 566, 667, 668
Bangor &c. R. Co. v. McComb, 60 Maine 290, 701
v. Smith, 47 Maine 34, 1813
Bangor Savings Bank v. City of Stillwater, 46 Fed. 899, 840, 974
v. City of Stillwater, 49 Fed. 721, 963
Bank &c. See also, President &c; Name of Bank.
Bank &c. v. Brainerd School Dist., 49 Minn. 106, 780
v. Bridges, 30 N. J. L. 112, 115
v. Brown, 26 N. Y. 467, 58, 83, 520, 1539
v. City of Louisville, 88 Fed. 398, 1740, 1757
v. City of New Orleans, 12 La. An. 421, 245
v. City of Port Townsend, 16 Wash. 450, 1753
v. Earl, 38 U. S. 519, 1807
v. Farrar, 1 La. An. 49, 523
v. Mayor &c., Dud. 130, 1510, 1511
v. Mayor &c., 43 N. Y. 184, 242, 246, 1205, 1551, 1725, 1727
v. Mayor &c., 7 Ohio 354, 973, 977
v. Patterson, 7 Cranch 299, 240, 257, 260, 262
v. Peel, 11 Ark. 750, 378
v. Planters' Bank, 9 Wheat. 907, 4, 6, 7
v. Town Council &c., 10 Rich. L. 104, 1511
v. Town of Stateville, 84 N. C. 169, 257, 644
v. Village of Rome, 18 N. Y. 38, 983
v. Wray, 4 Strob. 87, 217
Bankhead v. Brown, 25 Iowa 540, 685, 687, 688
Barber v. City of Chicago, 152 Ill. 37, 1146, 1245
v. City of East Dallas, 83 Tex. 147, 410
v. City of Roxbury, 93 Mass. 318, 1612
Barber Asphalt Pav. Co. v. City of Denver, 72 Fed. 336, 1305, 1306
v. City of Harrisburg, 62 Fed. 565, 1309
v. City of Harrisburg, 64 Fed. 283, 1305
v. City of New Orleans, 43 La. An. 464, 918
v. Gogreve, 41 La. An. 251, 1257, 1268
v. Hezel, 155 Mo. 391, 511, 1307
v. Hezel, 76 Mo. App. 135, 726
v. Hunt, 100 Mo. 22, 479
Barber Asphalt Pav. Co. v. Lampton, 70 Mo. App. 286, 1259
v. Ullman, 137 Mo. 543, 524, 725, 1146, 1155, 1282
v. Watt, 51 La. An. 1345, 1240, 1269, 1290, 1310
Barber Surgeons v. Pelson, 2 Lev. 252, 85
Barbier v. Connolly, 113 U. S. 27, 492, 509
Barbour v. City of Ellsworth, 67 Maine 294, 820
v. Inhabitants &c., 51 Maine 608, 364
Barbour Co. v. Brunson, 36 Ala. 362, 774
v. Horn, 48 Ala. 649, 774
Barce v. City of Shenandoah, 106 Iowa 426, 1329, 1802
Barclay v. City of Boston, 167 Mass. 596, 931
v. City of Boston, 173 Mass. 310, 1753
v. Howell's Lessees, 6 Peters 498, 675, 1559
Bard v. Poole, 12 N. Y. 495, 1576
Barden v. City of Portage, 79 Wis. 126, 1218
Bardick v. Dillon, 7 Okl. 535, 1700, 1704
Bardsley v. Sternberg, 17 Wash. 243, 173, 711, 951, 958
Bargate v. Shortridge, 5 H. L. Cas. 297, 1001, 1016
Barhite v. Home Tel. Co., 63 N. Y. S. 659, 1349, 1787, 1788, 1809
Barhyte v. Shepherd, 37 N. Y. 238, 1650, 1727
Barker v. Board &c., 45 Kan. 681, 1169, 1225, 1569
v. City of Omaha, 16 Neb. 269, 1288
v. Hovey, 26 Pac. 585, 1169, 1225, 1569
v. People, 3 Cow. 686, 185, 369
v. Smith, 10 S. C. 226, 523
v. Southern Const. Co., 20 Ky. L. 796, 186, 711, 753, 1267, 1290
v. State, 18 Ohio 514, 1516
v. Torrey, 69 Tex. 7, 1489
v. Town of Oswegatchie, 10 N. Y. S. 834, 858, 1172
v. Town of Oswegatchie, 16 N. Y. S. 727, 554
Barkley v. Levee Com'rs, 93 U. S. 258, 1529
Barksdale v. City of Laurens, 58 S. C. 413, 790
Barling v. West, 29 Wis. 307, 467, 499
Barlow v. City of Tacoma, 12 Wash. 32, 1241
v. Waters, 16 Ky. L. 426, 1373
Barnard v. Campau, 29 Mich. 162, 228
v. Campbell, 55 N. Y. 456, 991
v. Knox Co., 105 Mo. 382, 883
Barnert v. Mayor &c., 48 N. J. L. 395, 289, 472, 473
Barnes v. Barnes, 6 Vt. 388, 86, 87, 1475
v. Brookman, 107 Ill. 317, 311
v. Chapin, 4 Allen 444, 1613
v. Common Council, 89 Ala. 602, 1425
v. District of Columbia, 91 U. S. 540, 8, 46, 48, 103, 265, 782, 783, 788, 813, 1207, 1317, 1592
v. Dyer, 56 Vt. 469, 1261, 1297, 1498
v. Marshall Co., 56 Iowa 20, 1674, 1723, 1726
v. Town of Bakersfield, 57 Vt. 375, 178
v. Town of Lacon, 84 Ill. 461, 43, 982, 1531
v. Town of Marcus, 96 Iowa 675, 1327, 1339, 1802

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Barnett, Ex parte, 51 Ark. 215, 1074
Barnett v. Contra Costa Co., 67 Cal. 77, 788
v. Dennison, 145 U. S. 135, 1000, 1757
v. President &c., 28 Ill. 62, 482, 1132
Barney v. Dewey, 13 Johns. 224, 1599
Barney Dumping Boat Co. v. Mayor &c., 40 Fed. 50, 784, 788
Barnum v. Gilman, 27 Minn. 466, 378
v. Mayor &c., 62 Md. 275, 563, 664
v. Okolona, 148 U. S. 393, 1033, 1757
Barnum &c. Iron Works v. Speed, 59 Mich. 272, 1672
Baron v. Krebs, 41 Kan. 338, 1256
Barr v. City of Kansas City, 105 Mo. 550, 1598, 1618, 1636
v. City of Omaha, 42 Neb. 341, 1211
v. City of Philadelphia, 191 Pa. St. 438, 874, 882, 916
v. Denniston, 19 N. H. 170, 651
v. Mayor &c., 58 N. J. L. 255, 470
v. Stevens, 1 Bibb 292, 708
v. Village of Auburn, 89 Ill. 362, 477, 540, 1424
v. Village of Bainbridge, 59 N. Y. S. 132, 1337, 1364
Barrett v. Black, 56 Maine 498, 810
v. City of Cambridge, 10 Allen 48, 1725
v. Crane, 16 Vt. 246, 341
v. Falls City &c. Stone Co., 21 Ky. L. 669, 1240, 1275, 1373, 1799, 1805
v. Ocean City, 62 N. J. L. 588, 751
v. Sayer, 12 N. Y. S. 170, 1486
v. School Dist., 37 N. W. 445, 1480
v. Schuyler Co. Court, 44 Mo. 197, 992
Barron v. Mayor &c., 7 Peters 243, 673
Barrow v. Davis, 46 Mo. 394, 1288, 1722
Barrows v. City of Sycamore, 150 Ill. 588, 1111, 1112, 1347, 1348, 1703
Barry v. City of New York, 56 N. Y. S. 1049, 737
v. Goad, 89 Cal. 215, 852
v. Lowell, 8 Allen 127, 1216
v. Terkildsen, 72 Cal. 254, 1636
Bartemeyer v. Iowa, 18 Wall. 129, 137
Barter v. Commonwealth, 3 P. & W. 253, 298, 526, 528, 529, 1410
Barthet v. City of New Orleans, 24 Fed. 563, 503, 605
Bartholomew v. Town of Harwinton, 33 Conn. 408, 859
Bartle v. City of Des Moines, 38 Iowa 414, 891
Bartlett v. Board of Education, 59 Ill. 364, 310
v. Crozier, 15 Johns. 250, 222
v. Crozier, 17 Johns. 439, 1591
v. Governor, 2 Bibb 586, 318
v. Hooksett, 48 N. H. 18, 1612
v. King, 12 Mass. 537, 523
v. Kinsley, 15 Conn. 327, 352, 361, 1485
v. Town of Clarksburg, 45 W. Va. 393, 785, 808, 1394
v. Tucker, 104 Mass. 336, 217
Barton v. City of Pittsburgh, 4 Brews. 373, 540, 1257, 1421
v. City of Syracuse, 36 N. Y. 54, 812, 821, 1159, 1208
v. Incorporation &c. of Gadsden, 69 Ala. 495, 521
v. Sweptson, 44 Ark. 437, 210
Barton Co. v. Walser, 47 Mo. 189, 14
Bartram v. City of Bridgeport, 55 Conn. 122, 1261
Bass v. Fontleroy, 11 Tex. 698, 757
v. Mayor &c., 30 Ga. 845, 992
v. State, 34 La. An. 494, 673
Bassett v. City of St. Joseph, 53 Mo. 290, 1580, 1750
v. Den, 17 N. J. L. 432, 186, 187
v. Fish, 12 Hun 209, 222
v. Fish, 75 N. Y. 303, 1632
v. Porter, 4 Cush. 487, 48, 86, 87, 1475
Bassford, In re, 50 N. Y. 509, 1253
Bass Foundry &c. v. Board &c., 115 Ind. 234, 841, 943
Bastrop Co. v. Hearn, 70 Tex. 563, 905
Batchelder v. Epping, 28 N. H. 354, 672
Bateman v. Mathes, 54 N. J. L. 536, 1045
v. Mid Wales R. Co., L. R. 1 C. P. 499, 971
Bates v. Bassett, 60 Vt. 530, 666, 871
v. City of Houston, 14 Tex. Civ. App. 287, 792
v. City of St. Louis, 153 Mo. 18, 180
v. Gregory, 22 Pac. 683, 1736
v. Inhabitants &c., 151 Mass. 174, 1377, 1775
v. Mayor, 46 Ala. 158, 1500, 1508, 1510
v. Overseers &c., 14 Gray 163, 339, 1429
v. Porter, 74 Cal. 224, 900
v. Village of Rutland, 62 Vt. 178, 782, 827
Bates Co. v. Winters, 97 U. S. 83, 1027
Batesville Institute v. Kauffman, 18 Wall. 151, 459
Bath Co. v. Amy, 13 Wall. 244, 1528
Bathurst v. Course, 3 La. An. 260, 1427
Battle v. Corporation &c., 9 Ala. 243, 1502
Battles v. Laudenslager, 84 Pa. St. 446, 1027
Bauer v. City of Rochester, 35 N. Y. St. 959, 1609
Baum v. Whatcom Co., 19 Wash. 626, 754
Bauman v. City of Detroit, 58 Mich. 444, 264
v. Ross, 167 U. S. 548, 1273, 1302, 1778
Baumgartner v. Hasty, 100 Ind. 575, 11, 490, 594, 647, 1110, 1115, 1391, 1394
Baustian v. Young, 152 Mo. 317, 1340, 1800
Baxter v. City of Seattle, 3 Wash. 352, 595
v. State, 9 Wis. 38, 1488
v. Thomas, 4 Okla. 605, 492
v. Winoonski Turnpike Co., 22 Vt. 114, 9, 148, 777
Bayard v. Klinge, 16 Minn. 249, 374, 1539
Bay Co. v. Brock, 44 Mich. 45, 1672
v. Bullock, 51 Mich. 544, 387, 420
Bayland v. Mayor &c., 1 Sandf. 27, 251, 647
Bayley v. Taber, 5 Mass. 286, 1017
Bayliss v. Pearson, 15 Iowa 279, 216
Baysinger v. People, 115 Ill. 419, 213
Beach v. City of Elmira, 58 Hun 606, 1180
v. Leahy, 11 Kan. 23, 12, 56
v. People, 157 Ill. 659, 512, 1277
Beades v. Board &c., 122 Mich. 366, 1506
Beal v. Ray, 17 Ind. 554, 368
Bealafeld v. Borough of Verona, 188 Pa. St. 627, 1378
Beall v. Athens Tp., 81 Mich. 536, 1593, 1600, 1613
v. Mill Co., 45 Ga. 28, 1814
Beals v. Board &c., 28 Cal. 449, 436
v. Board &c., 35 Cal. 624, 763, 1522
v. Inhabitants &c., 174 Mass. 1, 1281, 1299
v. James, 173 Mass. 591, 1241
Beaman v. Board &c., 42 Miss. 237, 974

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Bean v. Board &c., 51 Iowa 53, 934
v. City of Middlesboro, 57 S. W. 478, 792
v. Inhabitants &c., 23 Maine 117, 662
v. People, 7 Colo. 200, 1429
v. Thompson, 19 N. H. 290, 348
v. Town of Concord, 48 Vt. 30, 829
Bear v. Commissioners &c., 124 N. C. 204, 1686
Bearce v. Fossett, 34 Maine 575, 347, 366
Beard v. City of Brooklyn, 31 Barb. 142, 722, 1306, 1748
v. City of Decatur, 64 Tex. 7, 177
v. City of Hopkinsville, 95 Ky. 239, 877, 880, 881
Bearden v. City of Madison, 73 Ga. 184, 466
Beardsley v. City of Hartford, 50 Conn. 529, 1221
v. Smith, 16 Conn. 368, 142, 143, 148, 342, 965, 1526
Beaser v. City of Ashland, 89 Wis. 28, 1702
Beasley v. Town of Beckley, 28 W. Va. 81, 543, 1724
v. United States, 21 Ct. Cl. 225, 772
Beaston v. Farmers' Bank &c., 12 Peters 102, 3
Beatty v. City of St. Joseph, 57 Mo. App. 251, 789
Beatty Co. v. Sibley Co., 32 Minn. 470, 904
Beauchamp v. Board &c., 45 Ill. 274, 1701
Beaumont v. City of Wilkesbarre, 142 Pa. St. 198, 113, 490, 1268, 1421
Beaver v. State, 124 Ind. 324, 909
Beaver Co. v. Armstrong, 44 Pa. St. 63, 1019
Beaver Creek v. Hastings, 52 Mich. 528, 276
Beavers v. Trimmer, 25 N. J. L. 97, 1095
Beazley v. Kennedy, 52 S. W. 791, 750
Beck v. Carter, 68 N. Y. 283, 810
v. City of Buffalo, 63 N. Y. S. 499, 1242, 1328
v. Hanscom, 29 N. H. 213, 305
Becker v. Baltimore &c. R. Co., 17 Ind. App. 324, 1261, 1294, 1298
v. City of Henderson, 100 Ky. 450, 305
v. City of Washington, 94 Mo. 375, 477, 481, 506, 539, 540, 1146
v. Keokuk Water-works, 79 Iowa 419, 1368, 1459, 1542
Beckman v. Mayor &c., 41 N. Y. S. 900, 1334
Beck St., In re, 44 N. Y. S. 1087, 1754
Beckwith v. Whalen, 70 N. Y. 430, 1573
Bedell v. Long Island R. Co., 44 N. Y. 367, 1109
v. Village of Sea Cliff, 46 N. Y. S. 226, 791
Bedford v. Hannibal &c. R. Co., 46 Mo. 456, 1109
Beebe v. City of Little Rock, 68 Ark. 39, 648, 741, 1321
Beecher v. City of Detroit, 92 Mich. 268, 587, 1255
v. Clay Co., 52 Iowa 140, 1550, 1727
Beechwood Ave. &c., In re, 194 Pa. St. 86, 1275, 1307
Beeder v. Village of Little Falls, 100 N. Y. 343, 1597
Beekman v. Frost, 18 Johns. 544, 228
v. Saratoga &c. R. Co., 3 Paige 45, 673, 685, 698
v. Third Ave. R. Co., 153 N. Y. 144, 586, 1351
Beer Co. v. Massachusetts, 97 U. S. 32, 80, 1082
Beers v. Arkansas, 20 How. 527, 770
v. Botsford, 3 Day 159, 142
v. Pinney, 12 Wend. 309, 1599
Beesman v. City of Peoria, 16 Ill. 484, 1418
Beeson v. City of Chicago, 75 Fed. 880, 1351, 1698
Behrensmeyer v. Kreitz, 135 Ill. 591, 377
Belkman's Case, 11 Abb. Pr. 164, 1133
Belling v. City of Evansville, 144 Ind. 644, 600
Belcher v. Farrar, 8 Allen 325, 1089, 1094
Belcher Sugar Refining Co. v. St. Louis Grain Elevator Co., 82 Mo. 121, 1354
Belfast &c. R. Co. v. Inhabitants &c., 60 Maine 568, 344, 361, 988
v. Inhabitants &c., 62 Maine 148, 304, 355, 356
Bellsle v. Clark, 49 Ala. 98, 217
Belknap v. City of Louisville, 99 Ky. 474, 874
v. Reinhart, 2 Wend. 375, 215
Bell v. Borough of Waynesboro, 195 Pa. St. 299, 872, 1032
v. City of Boston, 101 Mass. 506, 1157
v. City of Platteville, 71 Wis. 139, 666
v. City of Rochester, 33 N. Y. St. 739, 1095
v. Mayor &c., 79 Ga. 152, 990
v. Mayor &c., 105 N. Y. 139, 1530
v. McKinney, 63 Miss. 187, 221
v. Mobile &c. R. Co., 4 Wall. 598, 983
v. Nashville Bank, Peck 269, 45
v. Ohio &c. R. Co., 25 Pa. St. 161, 629
Bell Co. v. Alexander, 22 Tex. 350, 564, 664
Bellinger v. New York &c. R. Co., 23 N. Y. 42, 1603
Bellows v. Courter, 53 Hun 631, 1064
v. President &c., 2 Mason 31, 1806
Belo v. Commissioners, 76 N. C. 489, 985, 1023
Beloit v. Morgan, 7 Wall. 619, 1023
Belt v. Prince George &c. Abstract Co., 73 Md. 289, 1428, 1429
Bemis v. Leonard, 118 Mass. 502, 346
Benedict v. Goit, 3 Barb. 459, 682
Benjamin v. Webster, 100 Ind. 15, 1539
Bennet v. United States, 2 Wash. T. 179, 1737
v. Wheeler, 15 Gray 486, 335
Bennett v. Burch, 1 Denio 141, 341
v. City of Buffalo, 17 N. Y. 383, 1261, 1533
v. City of Marion, 102 Iowa 425, 1754
v. City of New Bedford, 110 Mass. 433, 301
v. People, 30 Ill. 389, 1400
v. State, 58 Miss. 556, 314
v. Whitney, 94 N. Y. 302, 222, 224
Benoist v. City of St. Louis, 19 Mo. 179, 387, 1513, 1535
v. Inhabitants &c., 8 Mo. 250, 958
Bensley v. Mountain Lake Water Co., 13 Cal. 306, 700
Benson v. Mayor &c., 9 Houst. 359, 1369
v. Mayor &c., 10 Barb. 223, 757
v. Mayor &c., 24 Barb. 248, 763
v. Monroe, 7 Cush. 125, 246, 248
v. Village of Waukesha, 74 Wis. 31, 1322
Benton v. City of Elizabeth, 61 N. J. L. 411, 693, 1390

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Benton v. City of Milwaukee, 50 Wis. 368, 1254
v. Hamilton, 110 Ind. 294, 637
v. Taylor, 46 Ala. 388, 1712, 1723
v. Trustees &c., 140 Mass. 13, 806
Bepler v. City of Cincinnati, 23 Wk. L. Bul. 229, 1268
Bergen v. Clarkson, 1 Halst. 428, 277, 532
Berghoffen v. City of New York, 64 N. Y. S. 1082, 752
Bergman v. St. Louis &c. R. Co., 88 Mo. 678, 489
v. St. Paul &c. R. Co., 21 Minn. 533, 700, 701
Berka v. Woodward, 125 Cal. 119, 611
Berket v. City of Peoria, 185 Ill. 369, 1272, 1275
Berks St., In re, 12 W. N. C. 10, 1251
Berlin v. Gorham, 34 N. H. 266, 61, 69, 81, 83, 90, 103, 404
Berlin Iron Bridge Co. v. City of San Antonio, 62 Fed. 882, 730, 735
v. City of San Antonio, 50 S. W. 408, 915, 1308
v. City of San Antonio, 92 Tex. 388, 717, 872, 1021, 1785, 1790
v. Wagner, 57 Hun 346, 10 N. Y. S. 840, 1173, 1580
Bernard v. City of Hoboken, 27 N. J. L. 413, 184
v. Torrance, 5 Gill & J. 383, 216
Bernards Tp. v. Morrison, 133 U. S. 523, 634, 1004, 1011
v. Stebbins, 109 U. S. 341, 1014
Berrenberg v. City of Boston, 137 Mass. 231, 1626
Berrien Co. Treasurer v. Bunbury, 45 Mich. 79, 192
Berry v. Commonwealth, 12 Ky. L. 462, 908
v. McComb City, 69 Miss. 882, 1560
Berry Horn &c. Co. v. Scruggs &c. Co., 62 Mo. App. 93, 1348
Bertholf v. O'Reilly, 74 N. Y. 509, 770
Bertonmeau v. Directors &c., 3 Woods 177, 1494
Berwind v. Galveston &c. Ins. Co., 20 Tex. Civ. App. 426, 719, 743
Bessinger v. Dickerson, 20 Iowa 260, 322, 324, 328
Best v. Allen, 30 Ill. 30, 1111
Betham v. City of Philadelphia, 196 Pa. St. 302, 787
Bethune v. Hughes, 28 Ga. 560, 100, 1403
Betts v. Bagley, 12 Pick. 572, 341
v. Village of Gloversville, 8 N. Y. 795, 1584
Bevans v. United States, 13 Wall. 56, 319
Bevard v. Hoffman, 18 Md. 479, 221
Bibel v. People, 67 Ill. 172, 282, 547
Bickerdike v. City of Chicago, 185 Ill. 280, 511, 512, 1173, 1174, 1252, 1279
Bickerstaff, In re, 70 Cal. 35, 1401, 1405
Bickford v. Inhabitants &c., 173 Mass. 552, 1780
Bicknell v. Widner School Tp., 73 Ind. 501, 862
Biddle v. Willard, 10 Ind. 62, 200
Bideiman v. State, 110 N. Y. 232, 1579
Bidwell v. City of Pittsburgh, 85 Pa. St. 412, 802
v. Town of Murray, 40 Hun (N. Y.) 190, 1591
Bieling v. City of Brooklyn, 120 N. Y. 98, 788, 1612
Bienville Water &c. Co. v. City of Mobile, 95 Fed. 539, 740
Bigelow v. Bridge, 8 Mass. 275, 326
Bigelow v. City of Chicago, 90 Ill. 49, 1252, 1268, 1272
v. Hillman, 37 Maine 52, 301, 521, 987
v. Inhabitants &c., 3 Pick. 267, 1613
v. Inhabitants &c., 14 Gray 541, 148, 778, 780, 803, 807, 1076
v. Inhabitants &c., 25 N. J. L. 297, 1232, 1425
v. West Wis. R. Co., 27 Wis. 478, 517
v. Wilson, 1 Pick. 485, 346
Biggs v. Huntington, 32 W. Va. 55, 1638
v. McBride, 17 Or. 640, 150
Bigler v. Mayor, 5 Abb. N. C. 51, 894
Bill v. City of Denver, 29 Fed. 344, 1306
v. Dow, 56 Vt. 562, 357
Billings v. City of Chicago, 167 Ill. 337, 1248, 1272
v. City of Worcester, 102 Mass. 329, 1586, 1600
v. Kneen, 57 Vt. 428, 1041
v. Lafferty, 31 Ill. 318, 221
Bills v. City of Goshen, 117 Ind. 221, 463, 481, 485, 503, 506, 605, 1405
Binde v. Klinge, 30 Mo. App. 285, 1492
Binell v. City of Kankakee, 64 Ill. 249, 977
Bingaman v. City of Pittsburgh, 147 Pa. St. 353, 1258
Binghamton Opera House Co. v. City of Binghamton, 156 N. Y. 651, 1759
Binsse v. Wood, 37 N. Y. 526, 1599
Bird v. Mayor &c., 33 Hun 396, 193
v. Merrick, L. & R. 115, 369
v. Perkins, 33 Mich. 463, 64
v. Wasco Co., 3 Or. 282, 183
Birdsall v. Clark, 73 N. Y. 73, 282, 285, 468, 547, 552, 572
Birdseye v. Village of Clyde, 61 Ohio St. 27, 1759
Birge v. Berlin Iron Bridge Co., 16 N. Y. S. 596, 361
v. Chicago &c. R. Co., 65 Iowa 440, 693
v. Gardner, 19 Conn. 507, 794
Birket v. City of Peoria, 185 Ill. 369, 1272
Birmingham v. Rumsey, 63 Ala. 252, 1529
Birmingham &c. R. Co. v. Birmington &c. R. Co., 79 Ala. 465, 568, 1184
v. Reg., 6 Ry. Cas. 628, 699
Bish v. Johnson, 21 Ind. 299, 994
Bishop v. Brainerd, 28 Conn. 289, 994
v. Cone, 3 N. H. 513, 367, 1427
v. Fahay, 15 Gray 61, 1751
v. Lucy, 21 Tex. Civ. App. 326, 223
v. Marks, 15 La. An. 147, 1270, 1520
v. Mayor &c., 7 Ga. 200, 1385
v. Moorman, 98 Ind. 1, 655
v. Schneider, 46 Mo. 472, 229
v. Williamson, 11 Maine 495, 225
Bissell v. City of Jeffersonville, 24 How. 287, 285, 1001
v. City of Kankakee, 64 Ill. 249, 624, 980, 1524, 1525
v. Davidson, 65 Conn. 183, 1762
v. New York &c. R. Co., 23 N. Y. 61, 1559
v. Saxton, 66 N. Y. 55, 324
v. Saxton, 77 N. Y. 191, 322
v. Spring Valley Tp., 110 U. S. 162, 863, 1014
Bittenhaus v. Johnston, 92 Wis. 588, 1386
Bittinger v. Bell, 65 Ind. 445, 987
Bitzer v. Leverton, 9 Kan. App. 76, 585

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Bitzer v. O'Bryan, 21 Ky. L. 1307, 1787, 1806
Black v. Brinkley, 54 Ark. 372, 403
v. City of Columbia, 19 S. C. 412, 264
v. Cohen, 52 Ga. 621, 992
v. Commissioners &c., 8 Neb. 440, 940
v. Common Council &c., 119 Mich. 571, 710, 744, 915
v. Cornell, 30 Mo. App. 641, 627, 848, 1480
v. Mayor &c., 50 Md. 235, 699, 701
Blackburn v. Inhabitants &c., 9 Pick. 97, 362
Blackett v. Blizzard, 9 B. & C. 851, 473
Blackman v. Lehman, 63 Ala. 547, 1018
Blackmore v. Vestry &c., L. R. 9 Q. B. D. 451, 812
Blackstone v. White, 41 Pa. St. 330, 86
Blackwell v. Hill, 76 Mo. App. 46, 1369
Bladen v. Philadelphia, 60 Pa. St. 464, 253
Blain v. Bailey, 25 Ind. 165, 106
Blair v. City of Charleston, 43 W. Va. 62, 1299, 1774, 1777, 1778
v. City of Waco, 75 Fed. 800, 550
v. Cuming Co., 111 U. S. 363, 980, 981, 1014
v. Forehand, 100 Mass. 136, 1751
v. Hanna, 87 Ind. 298, 1571
v. Luning, 76 Cal. 134, 1259
v. People, 181 Ill. 460, 297
v. Ridgely, 41 Mo. 63, 369
v. West Point, 2 McCrary 459, 51
Blake v. City of Dubuque, 13 Iowa 66, 705
v. City of Lowell, 143 Mass. 296, 1586, 1621
v. City of Pontiac, 49 Ill. App. 543, 789
v. Ferris, 5 N. Y. 48, 1368
v. Inhabitants &c., 68 Maine 365, 1587
v. Johnson, 1 N. H. 91, 1727
v. Mayor &c., 53 Ga. 172, 1730
v. Orford, 64 N. H. 299, 345, 632
v. People, 109 Ill. 504, 1691
v. Portsmouth &c. R. Co., 39 N. H. 435, 410
Blakely v. Bennecke, 59 Mo. 193, 218
v. City of Troy, 18 Hun 167, 1615
Blakely Tp. v. Devine, 36 Minn. 53, 1126
Blakemore v. Dolan, 50 Ind. 194, 521
Blakie v. Staples, 13 Grant 67, 651
Blanchard v. Bissell, 11 Ohio St. 96, 384, 392, 393, 463, 480, 1132, 1517
v. City of Kansas, 16 Fed. 444, 1209
v. Inhabitants &c., 102 Mass. 343, 262
Blanchford v. Dow, 32 Maine 557, 1727
Blanden v. City of Fort Dodge, 102 Iowa 441, 1777, 1778
Blank v. Kearney, 59 N. Y. S. 645, 1152, 1185
v. Kearny, 61 N. Y. S. 79, 728
Blanton v. Board &c., 101 N. C. 532, 1021
Blashfield v. Empire State &c. Co., 18 N. Y. S. 250, 1581
Blatchley v. Moser, 15 Wend. 215, 496, 1085
Bledsoe v. Gary, 95 Ala. 70, 1409, 1411, 1412
Blessing v. City of Galveston, 42 Tex. 641, 104, 446
Bleu v. Bear River Co., 20 Cal. 602, 714, 992
Blight v. Rochester, 7 Wheat. 535, 132
Bliss v. City of Chicago, 156 Ill. 564, 1277
v. Hosmer, 15 Ohio 44, 674
Bliss v. Inhabitants &c., 145 Mass. 91, 1595
Blize v. Castilo, 8 Mo. App. 290, 708
Block v. Commissioners &c., 99 U. S. 686, 1000, 1018
v. President &c., 36 Ill. 301, 488, 540, 1424
Blodgett v. City of Boston, 8 Allen (Mass.) 237, 1595
v. Holbrook, 39 Vt. 336, 361, 364, 1540
Bloodgood v. Mohawk &c. R. Co., 18 Wend. 9, 705
Bloom v. City of Xenia, 32 Ohio St. 461, 1132
Bloomer v. Stolley, 5 McLean 158, 67, 520
Bloomfield v. Charter Oak Bank, 121 U. S. 121, 15, 342, 344, 348, 358, 366, 367, 858, 964, 1022, 1522, 1526
Bloomfield &c. Co. v. Richardson, 63 Barb. 437, 689
Bloomington v. Chicago &c. R. Co., 134 Ill. 451, 1248
Bloomington Cemetery Assn. v. People, 139 Ill. 16, 1160, 1245
Blomington School Tp. v. National School Furnishing Co., 107 Ind. 43, 210, 857, 862
Bloor v. Town of Delafield, 69 Wis. 273, 1614
Blount v. City of Janesville, 31 Wis. 648, 558
Blue v. Beach, 155 Ind. 121, 1762
Blush v. Town of Colchester, 39 Vt. 193, 342, 344, 363
Bly v. City of Haverhill, 110 Mass. 520, 1613
v. Village of Whitehall, 120 N. Y. 506, 1632, 1638
Blythe v. Tompkins, 2 Abb. Pr. 468, 335
Board &c. See also, Name of County; County Com'rs; Commissioners.
Board &c. v. Aetna Life Ins. Co., 90 Fed. 222, 838, 952, 1011, 1757
v. Arnold, 112 Ill. 11, 1491, 1701
v. Arrighi, 54 Miss. 668, 643
v. Aspinwall, 24 How. 376, 1527
v. Auditor, 27 Mich. 165, 1712
v. Bacon, 96 Ind. 31, 1625
v. Bailey, 122 Ind. 46, 1575, 1577, 1578
v. Baker, 24 Ill. App. 231, 1483
v. Baker, 34 Ill. App. 620, 914, 1483
v. Barnett, 107 Ill. 507, 681
v. Beckwith, 10 Kan. 603, 675
v. Bird, 31 Cal. 66, 313
v. Blodgett, 155 Ill. 441, 973
v. Board &c., 15 Colo. 320, 439
v. Board &c., 32 Ind. 234, 419, 1519
v. Board &c., 128 Ind. 295, 1577
v. Board &c., 26 Kan. 181, 427, 1519
v. Board &c., 74 Mich. 721, 444
v. Board &c., 124 Mich. 491, 106
v. Board &c., 58 Miss. 619, 1517
v. Board &c., 62 Miss. 325, 441
v. Board &c., 63 N. J. L. 371, 1785
v. Board &c., 46 N. Y. St. 376, 1073
v. Board &c., 30 W. Va. 424, 1474
v. Bond, 3 Colo. 411, 1745
v. Boswell, 4 Ind. App. 133, 805, 1076
v. Bowen, 4 Lans. 24, 662
v. Boynton, 30 Ind. 359, 841, 1040
v. Bradford, 72 Ind. 455, 670
v. Brawner, 100 Ky. 166, 201
v. Brown, 89 Ind. 48, 1575, 1577, 1579, 1625
v. Brown, 4 Ind. App. 288, 1060
v. Brown, 33 La. An. 383, 326
v. Brush, 77 Ill. 59, 281, 1539
v. Burkey, 1 Ind. App. 565, 1057

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Board &c. v. Burtis, 103 N. Y. 136, 1737
v. Byrne, 67 Ind. 21, 841
v. Capital Gas &c. Co., 16 Ky. L. 780, 726
v. Carter, 2 Kan. 115, 1538
v. Casey, 98 N. Y. St. 251, 1095
v. Catlett, 86 Va. 158, 941
v. Chissom, 7 Ind. 688, 535
v. Chitwood, 8 Ind. 504, 1480
v. Churchill, 21 Va. 528, 1680
v. Cincinnati Steam Heating Co., 128 Ind. 240, 841
v. City of Kingston, 50 Hun 435, 1066
v. City of Lincoln, 81 Ill. 156, 1084, 1756
v. City of Springfield, 63 Ill. 66, 762, 1084
v. Clark, 92 N. Y. 391, 178, 318
v. Coffinbury, 1 Mich. 355, 311, 312
v. Cole, 2 Ind. App. 475, 611
v. Common Council &c., 128 Cal. 369, 1550
v. Cowan, 60 Miss. 876, 1522, 1531
v. Cox, 6 Ind. 403, 251, 410, 445, 647
v. Crotty, 9 Colo. 318, 1672
v. Cutter, 3 Colo. 349, 1552
v. Darrow, 13 Colo. 460, 208, 380
v. Davies, 1 Wash. 290, 108, 109, 403
v. Day, 19 Ind. 450, 959, 960, 971
v. Deprez, 87 Ind. 509, 1579
v. Dombke, 94 Ind. 72, 1580
v. Edwards, 76 Ill. 544, 1743
v. Emmerson, 95 Ind. 579, 1625
v. Fahlor, 114 Ind. 176, 947
v. Farwell, 25 Ill. 181, 973
v. Fonda, 77 N. Y. 350, 311, 322, 1014
v. Fullen, 111 Ind. 410, 947, 1233
v. Fullen, 118 Ind. 158, 947
v. Gantt, 73 Md. 521, 845, 1669
v. Giron, 46 La. An. 1364, 499, 541
v. Gorrell, 20 Gratt. 484, 684
v. Hall, 47 Wis. 208, 291
v. Harrodsburg Educational Dist., 9 Ky. L. 605, 921
v. Hayden, 13 Colo. App. 36, 737, 1688
v. Henzler, 41 Atl. 228, 477, 539, 540, 1762
v. Hicks, 2 Ind. 527, 1660
v. Hildebrand, 1 Ind. 555, 1063
v. Hill, 115 Ind. 316, 632, 889, 947
v. Hill, 122 Ind. 215, 841
v. Hinchman, 31 Kan. 729, 715
v. Hogan, 39 Kan. 606, 695, 1572
v. Holman, 34 Ind. 256, 841, 1035
v. Hon, 87 Ind. 356, 841, 1040
v. Howard, 27 C. C. A. 531, 1757
v. Hubbard, 45 Ill. 139, 1018
v. Huff, 91 Ind. 333, 1567
v. Inhabitants &c., 18 Ohio St. 221, 629
v. Jenks, 65 Ill. 275, 1287
v. Jennings, 104 Ind. 108, 188, 841
v. Jewell, 44 Minn. 427, 319, 912
v. Johnson, 21 Fla. 578, 961
v. Johnson, 124 Ind. 145, 207, 1473, 1672
v. Johnson, 127 Ind. 238, 178, 945
v. Judice, 39 La. An. 896, 326
v. Kimberlin, 108 Ind. 449, 1736
v. Leavitt, 4 N. M. 37, 108, 109
v. Legg, 93 Ind. 523, 1577, 1579
v. Legg, 110 Ind. 479, 1575
v. Leggett, 115 Ind. 544, 943
v. Lomax, 5 Ind. App. 567, 841, 842, 1040
v. Markle, 46 Ind. 96, 521
v. Mason &c. Co., 100 Ky. 48, 120
v. Mayor &c., 57 N. J. L. 452, 715
Board &c. v. McClintock, 51 Ind. 325, 1730
v. McLeod, 34 Kan. 306, 1035
v. McManus, 54 Ark. 446, 1662
v. McNamar, 10 Neb. 276, 981
v. Mighels, 7 Ohio St. 109, 7, 13, 82, 803, 813, 1076, 1734
v. Migues, 32 La. An. 923, 1509
v. Minor, 23 Ohio St. 211, 1495
v. Misenheimer, 78 Ill. 22, 1483
v. Moore, 17 Minn. 412, 780
v. Morrison, 22 Miss. 178, 1714
v. Motherwell Iron &c. Co., 128 Ind. 364, 841
v. Muhlenbacker, 18 Kan. 129, 696
v. Murray, 99 Ky. 422, 1145
v. National Life Ins. Co., 90 Fed. 228, 712, 999, 1005, 1011, 1021
v. Neidenberger, 78 Ill. 58, 1530
v. Newlin, 132 Ind. 27, 946, 947
v. New York Horse Manure Co., 47 N. J. Eq. 1, 1125
v. Norman, 51 La. An. 736, 515
v. O'Connor, 86 Ind. 531, 1191, 1530
v. Osburn, 4 Ind. App. 590, 842, 943, 1035, 1040
v. Pashley, 19 S. C. 315, 1537
v. Patterson, 56 Ill. 111, 629
v. Payne, 123 N. C. 435, 984
v. People, 13 Colo. App. 553, 203, 204
v. People, 36 Ill. 299, 1538
v. People, 65 Ill. 360, 152
v. People, 110 Ill. 511, 1084, 1514
v. People, 24 Ill. App. 410, 1665
v. People, 38 Ill. App. 239, 1655
v. People, 78 Ill. App. 586, 1687
v. Pierce, 6 N. Mex. 324, 452
v. Platt, 79 Fed. 567, 879
v. Quick, 99 N. Y. 138, 178
v. Reynolds, 49 Ill. 186, 1041
v. Risley, 40 Mo. 356, 579
v. Ristine, 124 Ind. 242, 1063
v. Ritter, 90 Ind. 362, 841, 1040
v. Roehr, 23 Ill. App. 629, 628, 1486
v. Rogers, 55 Ind. 297, 664
v. Ross, 46 Ind. 404, 663
v. Schmoke, 51 Ind. 416, 1063
v. School Dist, 56 Ark. 354, 1247
v. School Dist., 81 Wis. 543, 1487
v. Seaton, 90 Ind. 158, 841, 1040
v. Sherwood, 27 U. S. App. 458, 952, 1758
v. Shields, 62 Mo. 247, 55, 65, 66, 69, 70, 1001
v. Shields, 130 Ind. 6, 1038, 1039
v. Silvers, 22 Ind. 491, 465, 947
v. Spitler, 13 Ind. 235, 419
v. Springfield, 63 Ill. 66, 240
v. State, 61 Ind. 379, 1672
v. State, 86 Ind. 8, 1525
v. State, 115 Ind. 64, 997
v. State, 122 Ind. 333, 1490
v. State, 42 N. J. L. 263, 1577
v. State, 45 Ohio St. 555, 1493
v. Stone, 22 Ky. L. 25, 502, 1554
v. Strader, 18 N. J. L. 108, 814, 832
v. Sutliff, 97 Fed. 270, 998, 1031
v. Tate, 10 Neb. 193, 664
v. Taylor, 123 Ind. 148, 663, 840
v. Taylor, 99 N. C. 201, 1232
v. Templer, 34 Ind. 322, 909
v. Templeton, 116 Ind. 369, 179
v. Texas &c. R. Co., 46 Tex. 316, 562
v. Thomas, 12 Ky. L. 832, 1487
v. Thompson, 106 Ind. 534, 1579
v. Tinnon, 26 Kan. 1, 1494
v. Tower, 28 Minn. 45, 319
v. Union Bank &c., 96 Fed. 293, 993, 998
v. Valentine, 32 N. Y. St. 919, 1095

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Board &c. v. Walbridge, 38 Wis. 179, 991
v. Ward, 69 Ind. 441, 663, 670
v. Watson, 5 Bush 660, 1507
v. Webb, 47 Kan. 104, 855
v. Weeks, 130 Ind. 162, 854, 855
v. Welder, 64 Ill. 427, 1701
v. Wertz, 112 Ind. 268, 932
v. Wood, 126 Ind. 168, 909
v. Woods, 77 Mo. 197, 576
Boardman v. Board &c., 85 N. Y. 359, 1723
v. Halliday, 10 Paige 223, 197
Boardman Tp. v. Flagg, 70 Mich. 372, 860
Bobbett v. State, 10 Kan. 9, 1655
Bock v. City of New York, 64 N. Y. 777, 179, 180
Bodge v. Philadelphia, 167 Pa. St. 492, 784
Bodwic v. Fennell, 1 Wils. 233, 528
Boehm v. Mayor &c., 61 Md. 259, 1086, 1388
Boehme v. City of Monroe, 106 Mich. 401, 470
Bogart v. Green, 8 Mo. 115, 329
v. Lamotte Tp., 79 Mich. 294, 233, 235, 634, 635
Bogert v. City of Elizabeth, 27 N. J. Eq. 568, 1297
v. City of Indianapolis, 13 Ind. 134, 1086
v. Jackson Circuit Judge, 118 Mich. 457, 1704
v. Trustees, 43 N. J. L. 358, 340, 343
Bohen v. City of Waseca, 32 Minn. 176, 265, 1612
Bohler v. Schneider, 49 Ga. 195, 1508, 1521
Bohlman v. Railway Co., 40 Wis. 157, 187
Bohm v. Metropolitan El. R. Co., 129 N. Y. 576, 1581
Bohmy v. State, 21 Tex. App. 597, 494
Boland v. City of Kansas, 32 Mo. App. 8, 1634
Bolger v. Foss, 65 Cal. 250, 1574
Bolles v. Brimfield, 120 U. S. 759, 642, 992, 993, 1083
Bolton v. Gilleran, 105 Cal. 244, 510, 1702
v. Village of New Rochelle, 32 N. Y. S. 442, 811
Bonaparte v. Camden &c. R. Co., 1 Bald. 205, 4, 6
Bond v. City of Kenosha, 17 Wis. 284, 558
v. Hiestand, 20 La. An. 139, 106
Bonestell v. Mayor, 22 N. Y. 162, 638, 1212
Bonnell v. Allen, 53 Ind. 130, 656
v. Nuckolls Co., 28 Neb. 90, 884
v. Nuckolls Co., 32 Neb. 189, 884
Bonner v. McPhail, 31 Barb. 106, 1415
v. State, 7 Ga. 473, 1691
Bonsall v. Mayor &c., 19 Ohio St. 418, 1198, 1262
Boody v. United States, 1 Woodb. & M. 150, 318
Book v. Earle, 87 Mo. 246, 638, 883
Booker v. Young, 12 Gratt. 303, 162
Boom v. City of Utica, 2 Barb. 104, 251, 253, 647, 1106
Boom Co. v. Patterson, 98 U. S. 403, 591, 694, 1168, 1222
Boone v. People, 4 Ill. App. 231, 1483
Boone Co. v. Armstrong, 23 Neb. 764, 933
v. Jones, 54 Iowa 699, 211, 310, 324
v. Keck, 31 Ark. 387, 1745
Booth v. Hillsborough Co., 45 N. H. 139, 1067
Booth v. Town of Carthage, 67 Ill. 102, 523, 524
v. Town of Woodbury, 32 Conn. 118, 859
Boothbay v. Giles, 68 Maine 160, 311
Boots v. Washburn, 79 N. Y. 207, 1173
Bordages v. Higgins, 1 Tex. Civ. App. 43, 1206, 1207
Bordeaux v. Meridan Land &c. Co., 67 Miss. 304, 843, 1489
Bore v. Bush, 6 Mart. N. S. 1, 335
Boring v. Williams, 17 Ala. 510, 1415
Bork v. City of Buffalo, 127 N. Y. 64, 894
v. City of Buffalo, 2 N. Y. S. 559, 1288
Borough of Avoca v. Pittston &c. R. Co., 7 Kulp 470, 1347
Borough of Bathurst v. MacPherson, L. R. 4 App. Cas. 256, 812, 831
Borough of Belzhoover v. Heirs of Belzhoover, 178 Pa. St. 213, 1252
Borough of Bethlehem v. Haus, 26 W. N. C. 348, 1177
Borough of Blooming Valley, 56 Pa. St. 66, 1517
Borough of Chartiers' Appeal, 8 Atl. 181, 1220
Borough of Dunmore's Appeal, 52 Pa. St. 374, 1522
Borough of Freemansburg v. Rogers, 8 Atl. 872, 1214
Borough of Freeport v. Marks, 59 Pa. St. 253, 218, 516, 992
Borough of Greensburg v. Laird, 138 Pa. St. 533, 1195
v. Young, 53 Pa. St. 280, 1198
Borough of Harrisburg v. Crangle, 3 W. & S. 460, 693
Borough of Lansdowne v. Springfield Water Co., 7 Del. Co. R. 506, 1388
Borough of Little Meadows, 35 Pa. St. 335, 1517
Borough of Manchester v. Reserve Tp., 4 Pa. St. 35, 1474
Borough of Mauch Chunk v. Shortz, 61 Pa. St. 319, 1234
Borough of Milford v. Milford Water Co., 134 Pa. St. 610, 1450
Borough of Millerstown v. Bell, 123 Pa. St. 151, 1396
Borough of Mt. Pleasant v. Baltimore &c. R. Co., 138 Pa. St. 565, 1249
Borough of New York v. Forscht, 23 Pa. St. 391, 669
Borough of Norristown v. Fitzpatrick, 94 Pa. St. 121, 798, 799, 808
v. Norristown &c. R. Co., 148 Pa. St. 87, 1182
Borough of Port Royal v. Graham, 84 Pa. St. 426, 958
Borough of Sayre v. Phillips, 148 Pa. St. 482, 502
Borough of Shamokin v. Shamokin &c. R. Co., 196 Pa. St. 166, 1814
Borough of St. Peter v. Bauer, 19 Minn. 327, 1411
Borough of Susquehanna Depot v. Simmons, 112 Pa. St. 384, 1182
Borough of Warren v. Lewis, 16 Pa. Co. R. 176, 599
Borough of West Chester v. Town of Apple, 35 Pa. St. 284, 1615
Boss v. Hewett, 15 Wis. 285, 1018
v. Litton, 5 Car. & P. 407, 1637
Boston Belting Co. v. City of Boston, 149 Mass. 44, 1180
Boston Elec. Co. v. City of Cambridge, 163 Mass. 64, 739
Boston &c. Glass Co. v. City of Boston, 4 Met. 181, 1551

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Boston &c. R. Co. v. City of Boston, 140 Mass. 87, 1557
v. Folsom, 46 N. H. 64, 706
v. Lowell &c. R. Co., 124 Mass. 368, 679
Boston Rolling Mills v. City of Cambridge, 117 Mass. 396, 817, 1112
Boston &c. Society v. Mayor, 116 Mass. 181, 1247
Boston Tpk. Co. v. Town of Pomfret, 20 Conn. 590, 1427
Bostwick v. Barlow, 14 Hun 177, 224
v. Van Voorhis, 91 N. Y. 353, 321
Bothey v. City of Seattle, 17 Wash. 263, 1328
Boucher v. City of New Haven, 40 Conn. 456, 1591, 1592, 1619
Bouldin v. Mayor &c., 15 Md. 18, 1255
Boulton v. Crowther, 2 B. & C. 703, 801
Bound v. Wisconsin &c. R. Co., 45 Wis. 543, 623, 651, 997, 1738
Bounds v. Kirven, 63 Tex. 159, 678
Bourget v. City of Cambridge, 156 Mass. 398, 1595
Bourland v. Peoria Co., 16 Ill. 538, 1780
Bourn v. Hart, 93 Cal. 321, 926
Bourne v. State, 35 Neb. 1, 1481
Bouton v. Board &c., 84 Ill. 384, 619
v. City of Brooklyn, 15 Barb. 375, 1204, 1723
Bow v. Allenstown, 34 N. H. 351, 48, 49, 50, 87, 1475
Bowditch v. Boston, 101 U. S. 16, 802
v. Superintendent &c., 168 Mass. 239, 1240, 1281, 1712
Bowdoinham v. Richmond, 6 Greenl. 112, 1538
Bowen v. Mayor &c., 79 Ga. 709, 988
v. Morris, 2 Taunt. 374, 262
v. Newell, 16 R. I. 238, 1546
v. Peate, L. R. 1 Q. B. D. 321, 745
v. State, 108 N. Y. 166, 18
Bower v. Peate, 1 Q. B. D. 321, 1779
Bowers v. County Com'rs, 8 Ohio St. 285, 384
v. Fleming, 67 Ind. 541, 328
Bowler v. Perrin, 47 Mich. 154, 187
Bowlin v. Furman, 28 Mo. 427, 629
Bowman v. City of Colfax, 17 Wash. 344, 1779
v. City of Omaha, 59 Neb. 84, 1338
v. Ross, 167 U. S. 549, 1230
v. Tripp, 14 R. I. 242, 1621
v. Venice &c. R. Co., 102 Ill. 459, 693, 695
Boyce v. Auditor General, 90 Mich. 314, 859, 860
Boyd v. Alabama, 94 U. S. 645, 1082
v. Chambers, 78 Ky. 140, 90, 103, 760, 1410
v. City of Milwaukee, 92 Wis. 456, 1185, 1186
v. Insurance Patrol &c., 113 Pa. St. 269, 8, 9
v. Mill Creek School Tp., 114 Ind. 210, 857, 861, 1482
v. State, 88 Ala. 169, 1493
v. Town of Readsboro, 52 Vt. 522, 829
Boyden v. Brookline, 8 Vt. 284, 177
v. United States, 13 Wall. 17, 319
Boye v. City of Albert Lea, 74 Minn. 230, 788, 793
v. Girardey, 28 La. An. 717, 1508, 1521
Boyle v. Borough of Hazelton, 171 Pa. St. 167, 1362
v. City of Brooklyn, 71 N. Y. 1, 1257
v. City of New Orleans, 23 Fed. 843, 651
v. City of Saginaw, 124 Mich. 348, 1796
Boynton v. People, 155 Ill. 66, 1278
v. People, 159 Ill. 553, 1283
Boyt v. Dougherty Co., 79 Ga. 211, 990
Bozarth v. McGillicuddy, 19 Ind. App. 26, 749
Brabham v. Board &c., 54 Miss. 363, 9
Brackenridge v. Fitchburg, 145 Mass. 160, 1639
Brackett v. Blake, 7 Met. 335, 1191
Braden v. McNutt, 114 Ind. 214, 1477, 1489
Bradford v. City of Chicago, 25 Ill. 411, 244
v. City of Pontiac, 165 Ill. 612, 550, 1142, 1144, 1241, 1282
v. City &c. of San Francisco, 112 Cal. 537, 729, 1700
v. Mayor &c., 92 Ala. 349, 1581
Bradish v. Lucken, 38 Minn. 186, 1722
v. Tucker, 16 Fla. 258, 1722
Bradley v. Amis, 2 Hayw. 399, 1111
v. City of Eau Claire, 56 Wis. 168, 942
v. City of Frankfort, 99 Ind. 417, 697
v. City of Rochester, 7 N. Y. S. 237, 1395, 1405
v. Fall Brook I. D., 68 Fed. 948, 1242
v. Fisher, 13 Wall. 335, 220
v. Franklin Co., 65 Mo. 638, 992
v. Love, 76 Iowa 397, 920
v. McAtee, 7 Bush 667, 1234
v. Town of Richmond, 6 Vt. 121, 1745
v. Village of W. Duluth, 45 Minn. 4, 1157
Bradshaw v. City of Omaha, 1 Neb. 16, 104, 393, 1517
v. Rogers, 20 Johns. 103, 674
Bradstreet v. Supervisors, 13 Wend. 546, 134
Bradwell v. State, 16 Wall. 130, 137, 140
Brady, Petition of, 85 N. Y. 268, 1253
Brady v. City of Bayonne, 57 N. J. L. 379, 463, 727
v. City of Lowell, 3 Cush. 124, 776, 1594
v. City of Lowell, 4 Cush. 310, 814
v. Howe, 50 Miss. 607, 171
v. King, 53 Cal. 44, 1255
v. Mayor &c., 20 N. Y. 312, 235, 251, 257, 260, 644, 645, 647, 715
v. Mayor &c., 1 Barb. 584, 662
v. Northwestern Ins. Co., 11 Mich. 425, 1121, 1391
v. Rogers, 63 Mo. App. 222, 1136
v. Weeks, 3 Barb. 157, 1114
Braidy v. Theritt, 17 Kan. 468, 197
Braley v. Dickinson, 48 Vt. 599, 347, 1485
Bramah v. Roberts, 3 Bing. N. C. 963, 971
Bramlett v. City of Laurens, 58 S. C. 89, 1778
Bramwell v. Guheen, 2 Idaho 1069, 363
Branch v. Commonwealth, 2 Call 510, 333
v. Town of Marengo, 43 Iowa 600, 1510
Brand v. City of San Antonio, 37 S. W. 340, 550, 743
Brandirff v. Harrison Co., 50 Iowa 164, 652
Brandon, Ex parte, 49 Ark. 143, 1074
Brandt v. City of Milwaukee, 69 Wis. 386, 1319
Braney v. Inhabitants &c., 167 Mass. 16, 739
Branham v. Mayor &c., 24 Cal. 585, 629, 646
Brannon v. County Court, 33 W. Va. 789, 893

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Brattleboro Sav. Bank v. Board &c., 98 Fed. 524, 1003, 1033
Brauer v. City of Portland, 35 Or. 471, 1769
Braun v. Sauerwein, 10 Wall. 218, 455
v. State, 40 Tex. Cr. App. 236, 1407
Bravin v. City of Tombstone, 56 Pac. 719, 1687
Bray v. Town of Wallingford, 20 Conn. 416, 148, 1745
Brayton v. City of Fall River, 113 Mass. 218, 817, 830, 1775
Breaux v. Parish of Iberville, 23 La. An. 232, 636
Breckenridge, In re, 160 N. Y. 103, 1828, 1830
Breed v. Conley, 14 Iowa 269, 229
Breen v. Morris &c. R. Co., 1 Beas. 165, 1015
Breese v. Poole, 16 Ill. App. 551, 700
Bregguglia v. Borough of Vineland, 53 N. J. L. 168, 606
Brehm v. Mayor &c., 104 N. Y. 186, 1746
v. Mayor &c., 39 Hun 533, 1265
Breichbiel v. Powles, 39 N. Y. St. 856, 1055
Breil v. City of Buffalo, 144 N. Y. 163, 1336
v. City of Buffalo, 35 N. Y. S. 359, 1336
Brenan v. People, 176 Ill. 620, 52, 1823, 1824, 1825
Brenham v. German-American Bank, 144 U. S. 173, 561, 839, 972, 975, 1013
Brennan v. City of Buffalo, 162 N. Y. 491, 1292, 1307
v. City of St. Louis, 92 Mo. 482, 1580, 1627, 1790
v. City of Weatherford, 53 Tex. 330, 395
Bress v. Louviere, 37 La. An. 736, 1490
Brevoort v. City of Detroit, 24 Mich. 322, 1266
Brewer v. Bowman, 9 Ga. 37, 687
v. City of Springfield, 97 Mass. 152, 1722
v. Watson, 71 Ala. 299, 1429
Brewer Brick Co. v. Inhabitants &c., 62 Maine 62, 979, 980, 1503, 1542, 1545
Brewis v. City of Duluth, 3 McCrary 219, 437
Brewster v. City of Hornellsville, 54 N. Y. S. 915, 931
v. City of Peru, 180 Ill. 124, 1144, 1379
v. City of Syracuse, 19 N. Y. 116, 1261
v. Hyde, 7 N. H. 206, 341, 345
Brickill v. Mayor &c., 7 Fed. 479, 779
Bricklayers v. Plasterers, Palm. 396, 467
Brick Presby. Church v. Mayor &c., 5 Conn. 538, 1086
Bridge v. Wyckoff, 67 N. Y. 130, 1561, 1574
Bridge Co. v. City of Frankfort, 18 B. Mon. 41, 649
v. United States, 105 U. S. 470, 1576
Bridgeford v. City of Tuscumbia, 4 Woods 611, 1425
v. City of Tuscumbia, 16 Fed. 910, 1029
Bridgeport v. Housatonic R. Co., 15 Conn. 475, 210
Bridgeport Ins. Co. v. Wilson, 34 N. Y. 275, 1599
Bridges v. Mayor &c., 33 Ga. 113, 1501
v. Shallcross, 6 W. Va. 562, 150
Briegel v. City of Philadelphia, 135 Pa. St. 451, 1180
Briel v. City of Buffalo, 156 N. Y. 699, 1360
Brientnall v. City of Philadelphia, 103 Pa. St. 156, 593
Brieswick v. Mayor &c., 51 Ga. 639, 530
Briggs v. Borden, 71 Mich. 87, 362, 626, 652, 1486, 1496
v. Borough of West Newton, 164 Pa. St. 341, 1331
v. Coleman, 51 Ala. 360, 222
v. Murdock, 13 Pick. 305, 343, 346, 347, 348
v. Wardwell, 10 Mass. 356, 335
v. Whipple, 6 Vt. 95, 668
Brigham v. Edmunds, 7 Gray 359, 823
Bright v. McCullough, 27 Ind. 223, 426, 1508
v. Supervisors, 18 Johns. 242, 178
Brightman v. Inhabitants &c., 65 Maine 426, 800, 1394
v. Kerner, 22 Wis. 54, 1247, 1513
Brill Co. v. City of Philadelphia, 167 Pa. St. 1, 1208
Brimmer v. Boston, 102 Mass. 19, 637
Brinckerhoff v. Board &c., 6 Abb. Pr. 428, 1744
Brink v. Borough of Dunmore, 174 Pa. St. 395, 824
Brinkmeyer v. Evansville, 29 Ind. 187, 8, 225, 774, 786
Briscoe v. Bank, 11 Peters 257, 18
Bristol v. Bristol &c. W. W. Co., 19 R. I. 413, 1760
v. Johnson, 34 Mich. 123, 1721
v. New Chester, 3 N. H. 524, 61, 83, 434, 1519
Bristol &c. Co. v. City of Bristol, 97 Va. 304, 595, 1706
Britton v. Inhabitants &c., 107 Mass. 347, 1595
v. Platte City, 2 Dill. 1, 847
Brizzolari v. State, 37 Ark. 364, 607
Broad v. City of Paris, 66 Tex. 119, 316, 324
Broadbelt v. Loew, 44 N. Y. S. 159, 1363
Broadfoot v. City of Fayetteville, 124 N. C. 478, 117
Broadway Baptist Church v. McAtee, 8 Bush 508, 1262
Broberg v. City of Des Moines, 63 Iowa 523, 1621
Brockman v. City of Creston, 79 Iowa 587, 98, 577, 624, 652, 653
Brodhead v. City of Milwaukee, 19 Wis. 624, 548, 980
Brodie v. McCabe, 33 Ark. 690, 1523
Brodnax v. Groom, 64 N. C. 244, 1388
Brokaw v. City of Terre Haute, 97 Ind. 451, 699
v. Commissioners &c., 130 Ill. 482, 1644, 1668
Brome v. Cuming Co., 31 Neb. 362, 664
Bronson v. Borough of Wallingford, 54 Conn. 513, 1207
v. Oberlin, 41 Ohio St. 476, 557
v. Town of Washington, 57 Conn. 346, 1741, 1748
v. Woolsey, 17 Johns. 46, 216
Brook v. Horton, 68 Cal. 554, 1317
Brook Ave., In re, 40 N. Y. S. 949, 1273, 1774
Brooklyn v. Insurance Co., 99 U. S. 362, 1026
Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234, 629, 675, 685, 759, 760
Brooklyn &c. R. Co. v. Brooklyn &c. R. Co., 32 Barb. 358, 97, 468
Brooklyn Street, In re, 118 Pa. St. 640, 1560
Brooklyn Trust Co. v. Town of Hebron, 51 Conn. 22, 346, 359, 365
Brooks v. Fischer, 79 Cal. 173, 56, 63, 91

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Brooks v. Inhabitants &c., 106 Mass. 271, 1619, 1779
v. Mangan, 86 Mich. 576, 1396, 1404
v. Mitchell, 9 M. & W. 15, 1018
v. Polk Co., 52 Iowa 460, 1515
v. Riding, 46 Ind. 15, 1214
v. Shelton, 47 Miss. 243, 1717
Broom's Case, 152 Mass. 1, 1412
Brophy v. City of Perth Amboy, 44 N. J. L. 217, 536
v. Hyatt, 10 Colo. 223, 170, 300, 1085
v. Landman, 28 Ohio St. 542, 1254
Brothers v. Commissioners, 70 N. C. 726, 883
Broughton v. Manchester Water Works, 3 Barn. & Ald. 1, 971
v. Pensacola, 93 U. S. 266, 92, 405, 409, 410, 454
Brouwer v. Appleby, 1 Sandf. 158, 83
Brown's Case, 152 Mass. 1, 1412
Brown v. Austin, 1 Mass. 208, 216
v. Beatty, 34 Miss. 227, 673, 706
v. Board &c., 103 Cal. 531, 741
v. Board &c., 124 Cal. 274, 1317, 1712
v. Board &c., 22 Ky. L. 483, 874
v. Board &c., 49 Ohio St. 578, 1070
v. Bon Homme Co., 1 S. D. 216, 635, 992
v. Carl, 111 Iowa 608, 1449
v. City of Atchison, 39 Kan. 37, 240, 743
v. City of Cape Girardeau, 90 Mo. 377, 1541
v. City of Chicago, 110 Ill. 186, 1399
v. City of Denver, 3 Colo. 169, 1253
v. City of Grand Rapids, 83 Mich. 101, 802, 1200
v. City of Houston, 48 S. W. 760, 752
v. City of Lowell, 8 Met. 172, 680
v. City of Saginaw, 107 Mich. 643, 1235
v. Commissioners &c., 38 Kan. 436, 381
v. County Com'rs, 18 Neb. 355, 1577
v. County Com'rs, 21 Pa. St. 37, 523
v. County Com'rs, 2 McCrary 469, 836
v. Crego, 32 Iowa 498, 1528
v. Duplessis, 14 La. An. 842, 591
v. Finley, 3 McArthur 77, 1745
v. Gates, 15 W. Va. 131, 11, 1529
v. Green, 46 How. Pr. 302, 1661
v. Hicks, 1 Ark. 232, 1423
v. Hines, 16 Ind. App. 1, 1314
v. Hummel, 6 Pa. St. 86, 5
v. Illius, 27 Conn. 84, 809
v. Ingalls Tp., 81 Fed. 485, 988, 989, 998, 1029
v. Inhabitants &c., 65 Maine 402, 1096
v. Inhabitants &c., 79 Maine 305, 353, 357, 362, 854
v. Inhabitants &c., 155 Mass. 587, 860
v. Insurance Co., 3 La. An. 177, 447
v. Jerome, 102 Ill. 371, 1412
v. Lunt, 37 Maine 423, 195
v. Mayor &c., 57 Mo. 156, 1580
v. Mayor &c., 63 N. Y. 239, 259, 644
v. Mosely, 11 Sm. & M. 354, 331
v. Powell, 25 Pa. St. 229, 1571
v. Rome &c. R. Co., 86 Ala. 206, 696
v. Ruse, 69 Tex. 589, 955
v. Russell, 166 Mass. 14, 1827
v. School Dist., 64 N. H. 303, 631
v. Smith, 24 Barb. 419, 1727
v. Spofford, 95 U. S. 474, 1032
Brown v. Sprague, 5 Denio 545, 1757
v. State, 82 Ga. 224, 1677
v. Town of Canton, 4 Lans. 409, 870
v. Town of Guyandotte, 34 W. Va. 299, 1394
v. Town of Jacobs, 77 Wis. 27, 959, 966, 968, 1495
v. Town of Louisburg, 126 N. C. 701, 1325
v. Town of Southbury, 63 Conn. 212, 1623
v. Winterport, 79 Maine 305, 257, 302, 360
v. Witham, 51 Maine 29, 347
Browne v. Turner, 176 Mass. 9, 1310
Brownell v. Palmer, 22 Conn. 107, 355, 367
v. Town of Greenwich, 114 N. Y. 518, 1017
Browning v. Board, 44 Ind. 11, 1577
v. City of Chicago, 155 Ill. 314, 1145, 1243, 1277
v. City of Springfield, 17 Ill. 143, 267
Brownlee v. Board &c., 81 Ind. 186, 857
Brownsville Com'rs v. Loague, 129 U. S. 493, 1525
Brownville v. Cook, 4 Neb. 101, 607, 1420
Bruceville Coal Co. v. People, 147 Ill. 66, 734
Bruck v. Broesigks, 18 Iowa 393, 565
v. Collier, 56 Mo. 160, 1373
Bruecker v. Village of Port Chester, 101 N. Y. 240, 1205, 1264, 1551
Bruggerman v. True, 25 Minn. 123, 698
Bruker v. Town of Covington, 69 Ind. 33, 1329, 1639
Brumby v. Harris, 107 Ga. 257, 1298
Brunner v. Downs, 17 N. Y. S. 633, 595
Brunott v. McKee, 6 W. & S. 513, 332
Brunswick v. McKean, 4 Maine 508, 366
Brunswick Gaslight Co. v. Brunswick Village Corp., 92 Maine 493, 1173
Brush v. City of Carbondale, 78 Ill. 74, 591, 1322
v. Inhabitants &c., 64 N. J. L. 365, 1143
Brush Electric &c. Co. v. City Council &c., 114 Ala. 433, 713, 739, 931
v. Lefevre, 93 Tex. 304, 1791
Brusso v. City of Buffalo, 90 N. Y. 679, 1590, 1618, 1631, 1637
Bryan v. Cattell, 15 Iowa 538, 183, 1445
v. City of Lincoln, 50 Neb. 620, 988
v. United States, 1 Black 140, 322
v. Wear, 4 Mo. 106, 1424
Bryant v. City of St. Paul, 33 Minn. 289, 774, 780, 1096
v. Inhabitants &c., 86 Maine 450, 784
v. Robbins, 70 Wis. 258, 1178
v. Town of Randolph, 133 N. Y. 70, 778
v. Town of Randolph, 14 N. Y. S. 844, 811, 816
v. Woods, 11 Lea 327, 312
Brydon v. Campbell, 40 Md. 331, 228
Bryson v. Johnson Co., 100 Mo. 76, 837, 1171
Buchanan v. Borough of Beaver, 171 Pa. St. 567, 1698
v. City of Duluth, 40 Minn. 402, 1179
v. Curtis, 25 Wis. 99, 1559
v. Litchfield, 102 U. S. 278, 636, 877, 880, 884, 1000, 1001, 1003, 1005, 1007, 1009
v. School Dist., 25 Mo. App. 85, 618, 627

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Buck v. City of Eureka, 124 Cal. 61, 184, 713, 878
v. City of Lockport, 6 Lans. 251, 1527
v. Colbath, 3 Wall. 334, 330
Buckinghouse v. Gregg, 19 Ind. 401, 420
Buckley v. Briggs, 30 Mo. 452, 260
v. City of Kansas City, 156 Mo. 16, 1359
v. City of Tacoma, 9 Wash. 253, 1155, 1185
v. Drake, 41 Hun 384, 706
Buckman v. Landers, 111 Cal. 347, 1279
Bucknall v. Storey, 36 Cal. 67, 1232, 1723
v. Story, 46 Cal. 589, 246, 248
Buckner, Ex parte, 9 Ark. 73, 1724
Buckner v. Gordon, 81 Ky. 665, 90, 103, 370
v. Trustees &c., 1 A. K. Marsh. 9, 629
Buckton v. People, 12 Colo. App. 86, 298
Bucroft v. City of Council Bluffs, 63 Iowa 646, 648, 1301, 1305, 1306
Buell v. Ball, 20 Iowa 282, 516, 830, 1515, 1517
v. Buckingham, 16 Iowa 284, 472
v. State, 45 Ark. 336, 1403
Buffalo, In re, 78 N. Y. 362, 1421
Buffalo Cement Co. v. McNaughton, 156 N. Y. 702, 754
Buffalo &c. Cemetery v. City of Buffalo, 46 N. Y. 503, 1198, 1246, 1247, 1512, 1545
Buffalo &c. Co. v. City of Buffalo, 58 N. Y. 639, 818
v. Knight Templar &c. Assn., 17 Colo. 30, 1422
Buffalo &c. R. Co. v. City of Buffalo, 5 Hill 209, 658, 1356
v. Dudley, 14 N. Y. 336, 994
v. Falconer, 103 U. S. 821, 996
Buffett v. Troy &c. R. Co., 40 N. Y. 168, 233
Buffham v. City of Racine, 26 Wis. 449, 1745
Buford v. State, 72 Tex. 182, 115, 124, 402, 407, 446
Bull v. Bull, 43 Conn. 455, 1488
v. City of Quincy, 9 Ill. App. 127, 1548
v. Conroe, 13 Wis. 233, 558
v. Read, 13 Gratt. 78, 58, 61
Bullitt v. Clement, 16 B. Mon. 193, 221
v. Selvage, 20 Ky. L. 599, 1130, 1267, 1298
Bullitt Co. v. Washer, 130 U. S. 142, 284
Bullock v. Curry, 2 Met. 171, 1536, 1539
v. Geomble, 45 Ill. 218, 533
v. Mayor &c., 99 N. Y. 654, 1587, 1631
v. Town of Durham, 19 N. Y. S. 635, 1581
Bulow v. City Council, 1 N. & Mc. 527, 1511
Bump v. Smith, 11 N. H. 48, 1473
Bunch v. Town of Edenton, 90 N. C. 431, 1329, 1633
Bundy v. Town of Wolcott, 59 Vt. 665, 1552
Bunn v. People, 45 Ill. 397, 177
Bunting v. Willis, 27 Gratt. 144, 200
Burch v. Hardwicke, 30 Gratt. 24, 798, 1432
Burchell v. Mayor &c., 9 N. Y. S. 196, 1265
Burchfield v. City of New Orleans, 42 La. An. 235, 233, 235, 710
Burden v. Stein, 27 Ala. 104, 688
Burdett v. Allen, 35 W. Va. 347, 608
Burdick v. Richmond, 16 R. I. 502, 937
Burditt v. Swenson, 17 Tex. 489, 1387
Burford v. City of Grand Rapids, 53 Mich. 98, 264
Burger v. Philadelphia, 196 Pa. St. 41, 1361
Burgess v. Citizens' Pass. R. Co., 148 Pa. St. 87, 468
v. Pue, 2 Gill 11, 58, 1532
v. Pue, 2 Gill 254, 275
v. Seligman, 107 U. S. 20, 1033
Burhans v. Village of Norwood Park, 138 Ill. 147, 1174
Burk v. Ayers, 19 Hun 17, 689
v. Collins, 51 Ga. 391, 1428
v. Galveston Co., 76 Tex. 267, 1490, 1495
v. State, 5 Lea 349, 93, 408
Burke, Matter of, 62 N. Y. 224, 1233, 1234
v. Jeffries, 20 Iowa 145, 53
v. Supervisors, 7 W. Va. 371, 381
v. United States, 21 Ct. Cl. 317, 772
Burleigh v. Town of Rochester, 5 Fed. 667, 1014, 1018
Burleson v. City of Reading, 110 Mich. 512, 1333
Burley v. Bethune, 1 Marsh. 220, 221
Burlington v. Dennison, 42 N. J. L. 165, 284
Burlington &c. R. Co. v. Clay Co., 13 Neb. 367, 1535
v. Spearman, 12 Iowa 112, 384, 1251, 1517
Burlington Tp. v. Beasley, 94 U. S. 310, 981
Burlington Water Co. v. Woodward, 49 Iowa 58, 877, 891
Burlington Water Works Co. v. City of Burlington, 43 Kan. 725, 572, 1454
Burmeister, In re, 76 N. Y. 174, 1233, 1234
Burnett, Ex parte, 30 Ala. 461, 1118, 1415
Burnett v. City of Boston, 173 Mass. 173, 1130
v. Mayor &c., 12 Cal. 76, 1253, 1258
v. Mayor &c., 55 N. Y. S. 893, 1377
Burnham v. Brown, 23 Maine 400, 1018
v. City of Chicago, 24 Ill. 496, 1195
v. City of Fond du Lac, 15 Wis. 193, 1745
v. City of Milwaukee, 69 Wis. 379, 1741
Burns v. Bender, 36 Mich. 195, 861
v. Clarion Co., 62 Pa. St. 422, 1522
v. Mayor &c., 2 Kan. 454, 47, 982, 1535
v. Norton, 59 Hun 616, 221
v. Town of Le Grange, 17 Tex. 415, 1414
Burnside, Ex parte, 6 S. W. 276, 1677
v. Lincoln Co. Court, 86 Ky. 423, 1677
Burr v. Charlton Co., 2 McCrary 603, 992
v. City of Atlanta, 64 Ga. 225, 1395, 1537
v. City of Carbondale, 76 Ill. 455, 845, 1004
v. Inhabitants &c., 121 Mass. 241, 680
v. Town of Newcastle, 49 Ind. 322, 1378
Burrill v. City of Boston, 2 Cliff. 590, 647, 715
Burroughs v. Lowder, 8 Mass. 373, 311
Burrows, In re, 55 Ark. 275, 1074
Burt v. Brigham, 117 Mass. 307, 701
v. City of Boston, 122 Mass. 223, 1595

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Burt v. Winona &c. R. Co., 31 Minn. 372, 197, 289
Burton v. Burton, 1 Keyes 359, 132
v. Fulton, 49 Pa. St. 151, 222
v. Inhabitants &c., 34 Vt. 345, 871
v. Town of Koshkonong, 4 Fed. 373, 764
v. Tuite, 78 Mich. 363, 1428
Burwell v. Board &c., 93 N. C. 73, 676
Busbee v. Commissioners, 93 N. C. 143, 1230, 1499
Busenbark v. Clements, 22 Ind. App. 557, 1149, 1246, 1282, 1782
Bush v. Board &c., 42 N. Y. S. 417, 872
v. Coler, 53 N. Y. S. 679, 932, 1757
v. Glesy, 16 Or. 355, 961
v. Lisle, 89 Ky. 393, 1373
v. Seabury, 8 Johns. 418, 100, 580, 1402
v. State, 100 Wis. 549, 157
v. Wolfe, 55 Ark. 124, 949
Bushel v. Commonwealth Ins. Co., 15 S. & R. 173, 4, 5
Bushnel v. Whitlock, 77 Iowa 285, 1087
Buskirk v. Strickland, 47 Mich. 389, 676
Busse v. Town of Central Covington, 19 Ky. L. 157, 1314
Bussey v. Gilmore, 3 Maine 191, 1542
Butcher v. City of Camden, 29 N. J. Eq. 478, 201
Butchers' Assn. v. City of Boston, 139 Mass. 290, 1557
Butchers' Union &c. Co. v. Crescent City &c. Co., 111 U. S. 746, 1403, 1811
Butler, Appeal of, 73 Pa. St. 448, 1389, 1507
Butler v. Board &c., 46 Iowa 326, 1674, 1726
v. Board &c., 15 Kan. 178, 182, 743
v. City of Charleston, 7 Gray 12, 253, 280, 663, 1212
v. City of Milwaukee, 15 Wis. 493, 668
v. City of Muscatine, 11 Iowa 433, 1515
v. City of Passaic, 44 N. J. L. 171, 1091
v. Dunham, 27 Ill. 473, 983, 1023
v. Kent, 19 Johns. 223, 225
v. McLean Co., 32 Ill. App. 397, 671
v. Nevin, 88 Ill. 575, 1255
v. Pennsylvania, 10 How. 402, 81, 183, 756
v. Regents &c., 32 Wis. 1241, 177
v. Sullivan Co., 108 Mo. 630, 855
v. United States, 21 Wall. (88 U. S.) 272, 310, 312
v. Village of Edgewater, 53 Hun 633, 1180
v. Worcester, 112 Mass. 541, 1178
Butte Co. v. Boydstun, 68 Cal. 189, 556
v. Morgan, 76 Cal. 1, 328, 906
Butterfield v. Inhabitants &c., 6 Allen 187, 253
v. Klaber, 52 How. Pr. 255, 1104
Butterfoss v. State, 40 N. J. Eq. 325, 1125
Button v. City of Fort Worth, 78 Tex. 227, 316, 317
Buttrick v. City of Lowell, 1 Allen 172, 798, 1076, 1433
Butz v. Cavanagh, 137 Mo. 503, 1112, 1790
v. City of Muscatine, 8 Wall. 575, 89, 453, 764, 1531, 1535
v. Kerr, 123 Ill. 659, 1084
Butzman v. Whitbeck, 42 Ohio St. 223, 1509
Buxton v. Chesterfield, 60 N. H. 357, 1053
Byerly v. City of Anamosa, 79 Iowa 204, 1632
Byers v. Commonwealth, 42 Pa. St. 89, 541, 1413
Byler v. Asher, 47 Ill. 101, 370
Byles v. Golden Tp., 52 Mich. 612, 868
Byram v. City of Detroit, 50 Mich. 56, 1288
v. Foley, 17 Ind. App. 629, 1281
Byrd, Ex parte, 84 Ala. 17, 1402
Byrne v. Drain, 127 Cal. 663, 1285
Byrnes v. City of Cohoes, 67 N. Y. 204, 790, 811, 1217
v. City of St. Paul, 78 Minn. 205, 184
v. Mayor &c., 64 N. J. L. 210, 507
Byrum v. Peterson, 34 Neb. 237, 1654

C

Cabot v. Kingman, 166 Mass. 403, 1211, 1775, 1779
Cadwallader v. Durham, 46 N. J. L. 53, 1056
Caffrey, In re, 65 N. Y. S. 470, 1782
Cagwin v. Town of Hancock, 84 N. Y. 532, 1010
Cahill, In re, 110 Pa. St. 167, 1410, 1411
Cahoon v. Coe, 52 N. H. 518, 346
Cain v. City of Omaha, 42 Neb. 120, 1291
v. City of Syracuse, 95 N. Y. 83, 263, 821
v. Commissioners, 86 N. C. 8, 1269
v. Warner, 60 N. Y. S. 769, 1766
Cairo v. Zane, 149 U. S. 122, 1007, 1757
Cairo &c. R. Co. v. Sparta, 77 Ill. 505, 43, 985, 1017, 1531
v. Turner, 31 Ark. 494, 673, 706
Calaway Co. v. Foster, 93 U. S. 567, 995
Calder v. Police Jury, 44 La. An. 173, 1170
Caldwell v. City of Alton, 33 Ill. 417, 502, 1402, 1403
v. Cornell, 21 Ky. L. 812, 1806
v. Harrison, 11 Ala. 755, 295
v. Justices, 4 Jones Eq. 323, 43, 1532
v. Rupert, 10 Bush 179, 1232
v. State, 55 Ala. 133, 530
Caldwell Co. v. Harbert, 68 Tex. 321, 854, 1491, 1495, 1522
Calhoun, Ex parte, 87 Ga. 359, 1426
Calhoun v. Little, 106 Ga. 336, 513
v. Millard, 121 N. Y. 69, 1004
California v. Railroad Co., 127 U. S. 1, 45, 46, 1807
California Imp. Co. v. Moran, 128 Cal. 373, 1276, 1291, 1298, 1543
v. Reynolds, 123 Cal. 88, 749, 1141, 1786, 1800
California &c. R. Co. v. Board &c., 18 Cal. 671, 990, 1724
Calking v. Baldwin, 4 Wend. 667, 706
Calkins v. City of Hartford, 33 Conn. 57, 1618
v. City of Springfield, 167 Mass. 68, 1331
Call v. Chadbourne, 46 Maine 206, 58, 61, 83
Callaghan v. Town of Alexandria, 52 La. An. 1013, 490, 989
Callahan v. City of Boston, 175 Mass. 201, 1756
v. Inhabitants &c., 30 N. J. L. 160, 814
v. Mayor, 66 N. Y. 656, 1412
Callan v. Wilson, 127 U. S. 540, 543, 1413
Callanan v. Gilman, 107 N. Y. 360, 1582, 1609, 1610
Callaway Co. v. Foster, 93 U. S. 567, 1001

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Callen v. City of Junction City, 43 Kan. 627, 384
Callender v. Marsh, 1 Pick. 418, 680, 801
Callister v. Kochersperger, 168 Ill. 334, 1283
Calwell v. City of Boone, 51 Iowa 687, 263, 798, 1076
Cambridge v. Railroad Com'rs, 156 Mass. 161, 1578
Cameron v. School Dist., 42 Vt. 507, 366
Camp v. City of Minneapolis, 33 Minn. 461, 396
v. State, 27 Ala. 53, 1400
Campau v. City of Detroit, 106 Mich. 414, 718
v. Langley, 39 Mich. 451, 533, 1085
Campbell, Ex parte, 74 Cal. 20, 1399
v. City Council &c., 53 Ala. 527, 799
v. City of Cincinnati, 49 Ohio St. 463, 478, 1133
v. City of Kenosha, 5 Wall. 194, 643, 992
v. Cobb, 2 Sneed 18, 323
v. Dwiggins, 83 Ind. 473, 692
v. Evans, 45 N. Y. 356, 1085
v. Kennedy, 34 Iowa 494, 1570
v. Morris, 3 Har. & McH. 535, 137, 138
v. Seaman, 63 N. Y. 568, 1104, 1119
v. Thompson, 16 Me. 117, 536
Campbell Co. v. Knoxville &c. R. Co., 6 Coldw. 598, 982, 984
Campton v. Zabriskie, 101 U. S. 601, 1716
Canal Co. v. Commissioners &c., 26 La. An. 740, 675
v. Garrity, 115 Ill. 155, 588
Canal St., In re, 12 N. Y. 406, 1419
Canal St., In re, 11 Wend. 154, 1297
Canal Trustees v. City of Chicago, 12 Ill. 403, 1246
Canepa v. Mayor &c., 92 Ala. 358, 1391
Canfield v. Bayfield Co., 74 Wis. 60, 593
Canniff v. Mayor &c., 4 E. D. Smith 430, 187
Cannon v. City of St. Joseph, 67 Mo. App. 367, 791
v. New Orleans, 20 Wall. 577, 579, 1101, 1537
Canosia Tp. v. Grand Lake Tp., 80 Minn. 357, 411
Canova v. State, 18 Fla. 512, 433, 434, 442, 444, 955
Canterbury v. City of Boston, 141 Mass. 215, 1622
Canto, Ex parte, 21 Tex. App. 61, 1402
Cantrell v. Clark Co., 47 Ark. 239, 1052
Cantwell v. City of Appleton, 71 Wis. 463, 1620, 1636
Canyonville &c. Road Co. v. Douglass Co., 5 Or. 280, 708
Cape Girardeau Co. Court v. Hill, 118 U. S. 68, 106
Cape Girardeau &c. Road v. Dennis, 67 Mo. 438, 686
v. Renfroe, 58 Mo. 265, 682
Cape May &c. R. Co. v. City of Cape May, 35 N. J. Eq. 419, 522
Capen v. Foster, 12 Pick. 485, 370
Capital Bank v. School Dist., 1 N. D. 479, 851, 968
v. School Dist., 6 Dak. 248, 1486
Capital City Gaslight Co. v. Charter Oak Ins. Co., 51 Iowa 31, 1512
Capital Gas Co. v. Young, 109 Cal. 140, 732
Capital Printing Co. v. City of Raleigh, 126 N. C. 516, 1801
v. Hoey, 124 N. C. 767, 1687
Capman v. Inhabitants &c., 76 Maine 427, 1622
Card v. City of Ellsworth, 65 Maine 547, 1613
Cardwell v. American Bridge Co., 113 U. S. 205, 1576
Carey v. Board of Police &c., 53 N. J. L. 311, 1436
v. City of Ann Arbor, 124 Mich. 134, 1364
v. City of Duluth, 38 Minn. 218, 411
v. City of East Saginaw, 79 Mich. 73, 1189
v. State, 34 Ind. 105, 331, 333
Carhart v. Auburn G. L. Co., 22 Barb. 297, 1108
Carland v. Commissioners &c., 5 Mont. 579, 288
Carle v. City of De Soto, 156 Mo. 443, 1797, 1799
Carleton v. Franconia &c. Steel Co., 99 Mass. 216, 810
v. Inhabitants &c., 88 Maine 293, 1336
v. Inhabitants, 102 Mass. 348, 1552
v. People, 10 Mich. 250, 66, 69, 70, 195, 197, 289, 296
v. Rugg, 149 Mass. 550, 1107
Carlin v. Cavender, 56 Mo. 286, 1259
Carling v. Mayor &c., 64 N. J. L. 223, 1713
Carlisle v. Wilson, 110 Ga. 860, 1365
Carll v. Village of Northport, 42 N. Y. S. 576, 1777
Carlton v. Newman, 77 Maine 408, 1531
v. Reddington, 21 N. H. 291, 1095
Carlyle Water &c. Co. v. City of Carlyle, 31 Ill. App. 325, 639, 889
Carmack v. Commonwealth, 5 Binn. 184, 329, 332
Carman v. Steubenville R. Co., 4 Ohio St. 399, 745
Carmichael v. City of Texarkana, 94 Fed. 561, 1106, 1109
Carney v. Village of Marseilles, 136 Ill. 401, 1324, 1524, 1580, 1795
Carpenter v. Aldrich, 3 Met. 58, 1740
v. City of Cohoes, 81 N. Y. 21, 1579, 1597
v. City of New York, 60 N. Y. S. 633, 1781
v. City of New York, 64 N. Y. S. 839, 1212
v. City of St. Paul, 23 Minn. 232, 1139
v. Gwynn, 35 Barb. 395, 1559
v. Inhabitants &c., 51 Mo. 483, 1001
v. People, 8 Colo. 116, 90, 103, 114
Carr v. Ashland, 62 N. H. 665, 828
v. City of Easton, 142 Pa. St. 139, 1632
v. City of St. Louis, 9 Mo. 191, 97, 468, 494
v. McCampbell, 61 Ind. 97, 1429
v. Northern Liberties, 35 Pa. St. 324, 264, 820, 830
v. State, 103 Ind. 548, 697, 1573
v. United States, 98 U. S. 433, 770
Carrico v. People, 123 Ill. 198, 1473, 1485
Carrier v. Town of Shawangunk, 10 Fed. 220, 1001
Carrington v. City of St. Louis, 89 Mo. 208, 1802
Carroll v. City of St. Louis, 12 Mo. 444, 181, 663
v. Langan, 63 Hun 380, 1413
v. Mayor, 12 Ala. 173, 1724
v. Siebenthaler, 37 Cal. 193, 213
v. Wall, 35 Kan. 36, 296, 297, 475
Carroll Co. v. Smith, 111 U. S. 556, 374, 1008, 1026
Carrollton &c. Mfg. Co. v. City of Carrollton, 20 Ky. L. 818, 797
Carron v. Martin, 26 N. J. L. 594, 1257

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Carrothers v. Board &c., 16 W. Va. 527, 1717, 1719
Carskaddon v. City of South Bend, 141 Ind. 596, 713
Carson v. City of Hartford, 48 Conn. 68, 700, 701
v. Mayor &c., 94 Ga. 617, 604
v. McPhetridge, 15 Ind. 327, 368
Carstesen v. Town of Stratford, 67 Conn. 428, 793, 797, 1328
Carswell v. Mayor &c., 2 Marv. 360, 1359, 1362
Carter v. City of Augusta, 84 Maine 418, 1053
v. City of Portland, 4 Or. 339, 652
v. Clark, 89 Ind. 238, 682
v. Dow, 16 Wis. 298, 1521, 1751
v. McFarland, 75 Iowa 196, 274
v. Ottawa, 24 Fed. 546, 1026
v. Town of Monticello, 68 Iowa 178, 1618, 1620
Carter Co. v. Sinton, 120 U. S. 517, 441
Carthage v. Frederick, 122 N. Y. 268, 1382
Carthan v. Lang, 69 Iowa 384, 652
Cartright v. Belmont, 58 Wis. 370, 1597
Cartwright v. Board of Health &c., 56 N. Y. S. 731, 1406
Carvin v. City of St. Louis, 151 Mo. 334, 1361
Cary v. City of Ottawa, 8 Fed. 199, 1001
v. City of Pekin, 88 Ill. 154, 1515, 1516
v. Mayor &c., 49 N. J. L. 110, 1397
Cascade Co. v. City of Gt. Falls, 18 Mont. 537, 1315
Cascaden v. City of Waterloo, 106 Iowa 673, 291, 522, 1707
Case v. Blood, 71 Iowa 632, 1487
v. Favier, 12 Minn. 89, 571
v. Johnson, 91 Ind. 477, 1201
v. Mayor &c., 30 Ala. 538, 85, 537
Casinello, Ex parte, 62 Cal. 538, 1081
Caskey v. City of Greensburg, 78 Ind. 233, 313
Cason v. City of Lebanon, 153 Ind. 567, 724, 731, 736, 1151, 1710, 1792
Caspary v. City of Portland, 19 Or. 496, 819
Cass v. Bellows, 31 N. H. 501, 1422, 1427
v. Dillon, 2 Ohio St. 607, 106, 607, 763, 995
v. People, 166 Ill. 126, 511, 512, 1144, 1261
Cass Co. v. Gillett, 100 U. S. 585, 995, 996, 1026
v. Green, 66 Mo. 498, 1026
v. Johnston, 95 U. S. 360, 373, 374, 473, 1001
Cass Farm Co. v. City of Detroit, 124 Mich. 433, 721, 748, 1174, 1506
Cassady v. City of Covington, 12 Ky. L. 980, 1157
Cassedy v. Town of Stockbridge, 21 Vt. 391, 1641
Cassidy v. City of Bangor, 61 Maine 434, 275, 301
Cassin v. Zavalla Co., 70 Tex. 419, 275
Caswell v. City of Mashalltown, 101 Iowa 598, 179
Cate v. Martin, 69 N. H. 610, 155, 1787
Cathcart v. Comstock, 56 Wis. 590, 424, 432
Catron v. Lafayette Co., 106 Mo. 659, 896, 1001, 1740
Cavan v. City of Brooklyn, 5 N. Y. S. 758, 1746
Cavanagh v. Board &c., 59 N. Y. 412, 1766
v. City of Boston, 139 Mass. 426, 823
Cavanaugh v. Smith, 84 Ind. 380, 1572
Caviel v. Coleman, 72 Tex. 550, 1491
Cavis v. Robertson, 9 N. H. 524, 367
Cawley v. People, 95 Ill. 249, 211, 313
Cedar Rapids &c. R. Co. v. Cowan, 77 Iowa 535, 1674
Cemetery Ass'n v. Meninger, 14 Kan. 312, 571
Center &c. R. Co. v. Black, 32 Ind. 468, 1720
Center St., In re, 115 Pa. St. 247, 1200, 1261, 1262
Central Bridge Co. v. City of Lowell, 15 Gray 106, 279, 471, 674
Central City Horse R. Co. v. Fort Clark Horse R. Co., 81 Ill. 523, 674
Central Crosstown R. Co. v. Metropolitan St. R. Co., 44 N. Y. S. 752, 1351
Central Irr. Dist. v. De Lappe, 79 Cal. 351, 1421
Central R. Co. v. State, 32 N. J. L. 220, 591
Central W. & W. Co. v. City of Corpus Christi, 23 Tex. Civ. App. 390, 735
Cerf v. Pfleging, 94 Cal. 131, 1560
Chadbourn v. Town of Newcastle, 48 N. H. 196, 1394
Chaddock v. Day, 75 Mich. 527, 1403, 1508
Chadwick v. McCausland, 47 Maine 342, 1561
Chafee v. City of Aiken, 57 S. C. 507, 1321
Chaffee v. Middlesex R. Co., 146 Mass. 224, 335, 1019
Chaffee Co. v. Potter, 142 U. S. 335, 998, 1003, 1005, 1009, 1011, 1024
Chafin v. Waukesha Co., 62 Wis. 463, 536, 542
Chahoon v. Commonwealth, 21 Gratt. 822, 1411
Chakin v. School Dist., 30 N. H. 25, 1485
Chalk v. White, 4 Wash. 156, 1645
Challis v. Atchison &c. R. Co., 16 Kan. 117, 685
v. Parker, 11 Kan. 394, 1252
Challiss v. Board &c., 15 Kan. 49, 1717
Chamberlain v. Bell, 7 Cal. 292, 228
v. City of Cleveland, 34 Ohio St. 551, 1231, 1256
v. City of Evansville, 77 Ind. 542, 500, 523
v. City of Litchfield, 56 Ill. App. 652, 599
v. Elizabethport Steam Cordage Co., 41 N. J. Eq. 43, 684
v. Enfield, 43 N. H. 356, 1105, 1112, 1613
v. Inhabitants &c., 13 Maine 466, 350, 352, 354, 358, 1428
v. Taylor, 36 Hun 24, 1166, 1550
Chamberlain of London v. Compton, 7 D. & R. 597, 100, 500
Chamberlin v. Gleason, 163 N. Y. 214, 1241
v. Morgan, 68 Pa. St. 168, 689
Chambers v. City of St. Joseph, 33 Mo. App. 536, 1747
v. City of St. Louis, 29 Mo. 543, 563, 665
v. Furry, 1 Yeates 167, 681
v. King &c. Bridge Co., 16 Kan. 270, 1737
v. Lewis, 9 Iowa 583, 706
v. Saterlee, 40 Cal. 497, 673, 788, 1234
v. Territory, 3 Wash. T. 280, 1663
Chambers Co. v. Clews, 21 Wall. 317, 985, 1000, 1002
Champaign City v. Patterson, 50 Ill. 61, 1596
Champlin v. Village of Penn Yan, 34 Hun 33, 1612
Chandler v. Bradish, 23 Vt. 416, 168, 340, 361

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Chandler v. City of Boston, 112 Mass. 200, 384, 1517
v. Hanna, 73 Ala. 390, 556
v. People, 161 Ill. 41, 1241
v. Railroad Commissioners, 141 Mass. 208, 1743
v. Reynolds, 19 Kan. 249, 427, 1519
Chapin v. School Dist., 30 N. H. 25, 345, 346
v. School Dist., 35 N. H. 445, 664
Chaplain v. Brown, 15 R. I. 579, 1214
Chaplin v. Hill, 24 Vt. 528, 644
Chapman v. Commonwealth, 25 Gratt. 721, 325
v. Clark, 49 Mich. 305, 187
v. County Com'rs, 79 Maine 267, 287
v. Douglass Co., 107 U. S. 348, 240, 242, 632
v. Ferguson, 1 Bart. El. Cas. 267, 377
v. Gates, 54 N. Y. 132, 705
v. Milton, 31 W. Va. 384, 1596, 1620
v. Oshkosh &c. R. Co., 33 Wis. 629, 701
v. Swan, 65 Barb. 210, 1563, 1567, 1568
Charles v. City of Marion, 98 Fed. 166, 1284
v. Finchley Local Board, 52 L. J. Ch. 554, 809
v. Haskins, 11 Iowa 329, 332
v. Mayor &c., 27 N. J. L. 208, 294
Charles River Bridge v. Warren Bridge, 11 Pet. 420, 758, 1323
Charleston v. Oliver, 16 S. C. 47, 528, 1389, 1507, 1509
Charlotte &c. Co. v. Gow, 59 Ga. 685, 321
Charnock v. District Tp. &c., 51 Iowa 70, 1530
Chartiers Tp. v. Phillips, 122 Pa. St. 145, 1332, 1600
Chase v. Chase, 95 N. Y. 373, 1205
v. City of Cleveland, 44 Ohio St. 505, 1344
v. City of Lowell, 7 Gray 33, 163
v. City of Oshkosh, 81 Wis. 313, 582, 1322, 1369
v. City of Portland, 86 Maine 367, 1211, 1219
v. City of Worcester, 108 Mass. 60, 1182
v. City Treasurer &c., 122 Cal. 540, 1152, 1280, 1284, 1285
v. Middleton, 123 Mich. 647, 779
v. President &c., 19 Pick. 564, 142, 342, 965, 1526
v. Saratoga Co., 33 Barb. 603, 1661
v. Stephenson, 71 Ill. 383, 1494
v. Town of Rutland, 47 Vt. 393, 697
Chatterton v. Parrott, 46 Mich. 432, 1570
Chawk v. Beville, 21 Ky. L. 1769, 1275
Cheaney v. Hooser, 9 B. Mon. 330, 69, 384, 393, 1515, 1516, 1517
Cheatham v. Shearon, 1 Swan 213, 1105
v. United States, 92 U. S. 85, 1718
Cheeney v. Inhabitants &c., 60 Mo. 53, 233, 647, 960
Cheetham v. Hampson, 4 T. R. 318, 1095
Cheezen v. State, 2 Ind. 149, 524
Chegaray v. Jenkins, 5 N. Y. 376, 229
Chelmsford Co. v. Demarest, 7 Gray 1, 326
Chemung Bank v. Supervisors, 5 Denio 517, 253
Chenery v. Inhabitants &c., 16 Gray 125, 1750
Cherokee &c. Co. v. Justices &c., 28 Ga. 121, 1511
Cherokees v. Georgia, 5 Peters 1, 136
Cherry v. Board &c., 52 N. J. L. 544, 1156
v. City of Rock Hill, 48 S. C. 553, 1777
v. Fewell, 26 S. E. 498, 1777
Chesapeake &c. Canal Co. v. Baltimore &c. R. Co., 4 Gill & J. 1, 123
Chesapeake &c. R. Co. v. Bradford, 6 W. Va. 220, 699
v. Hoard, 16 W. Va. 270, 106
Chesapeake &c. Tel. Co. v. Mayor &c., 89 Md. 689, 715, 727, 1349, 1704
Cheshire Prov. Inst. v. Stone, 52 N. H. 365, 1055
Chess v. Manown, 3 Watts 219, 681
Chesshire v. People, 116 Ill. 493, 1689
Chester v. Black, 132 Pa. St. 568, 1252
Chester Co. v. Barber, 97 Pa. St. 455, 663
v. Brower, 117 Pa. St. 647, 678
Chester &c. R. Co. v. Commissioners, 72 N. C. 486, 374, 985
Chestnutwood v. Hood, 68 Ill. 132, 1533, 1701
Chicago v. Babcock, 143 Ill. 358, 1635
v. C. & W. Ind. R. Co., 105 Ill. 73, 1757
v. Robbins, 2 Black 418, 8, 1345, 1599
v. Sheldon, 9 Wall. 50, 510, 764, 1183
v. Shober &c. Co., 6 Bradw. 560, 210
v. Taylor, 125 U. S. 161, 678
Chicago Board of Trade v. People, 91 Ill. 80, 1812
Chicago Dock &c. Co. v. Garrity, 115 Ill. 155, 88
Chicago League Ball Club v. City of Chicago, 77 Ill. App. 124, 1385
Chicago Packing Co. v. City of Chicago, 88 Ill. 221, 496, 604
Chicago Pub. Stock Exch. v. McClaughry, 148 Ill. 372, 1697
Chicago &c. R. Co. v. Ayers, 106 Ill. 511, 1219
v. Baldridge, 177 Ill. 229, 1554
v. Board &c., 49 Kan. 399, 991
v. Chicago City R. Co., 62 Ill. App. 502, 1348
v. City of Chicago, 91 Ill. 573, 1248
v. City of Chicago, 140 Ill. 309, 591, 1249
v. City of Chicago, 148 Ill. 141, 659, 1236
v. City of Chicago, 172 Ill. 66, 465
v. City of Chicago, 174 Ill. 439, 465, 525, 1151, 1152, 1379
v. City of Chicago, 178 Ill. 429, 1132, 1147, 1154
v. City of Chicago, 184 Ill. 154, 504, 512, 1798
v. City of Chicago, 166 U. S. 226, 1774
v. City of Council Bluffs, 109 Iowa 425, 481, 591
v. City of Joliet, 79 Ill. 25, 1117, 1349
v. City of Joliet, 153 Ill. 649, 1249, 1250, 1251, 1300, 1308
v. City of Milwaukee, 89 Wis. 506, 1249, 1250, 1251
v. City of Milwaukee, 97 Wis. 418, 1379
v. City of Ottawa, 148 Ill. 397, 1697
v. City of Quincy, 136 Ill. 489, 1706
v. City of Quincy, 136 Ill. 563, 1249, 1355
v. City of Quincy, 139 Ill. 355, 1156, 1162
v. City of Quincy, 158 Ill. 64, 1249
v. Cole, 75 Ill. 591, 1720
v. Commissioners &c., 38 Kan. 597, 996

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Chicago &c. R. Co. v. Dunbar, 95 Ill. 571, 1812
v. Engle, 76 Ill. 317, 540, 1423
v. Fell, 22 Ill. 333, 1711
v. First Methodist Episcopal Church &c., 102 Fed. 85, 106
v. Francis, 70 Ill. 238, 1602
v. General Electric R. Co., 74 Ill. App. 465, 1351
v. Haggarty, 67 Ill. 113, 1356
v. Hall, 90 Ill. 42, 1602
v. Haller, 82 Ill. 208, 1602
v. Hines, 82 Ill. App. 488, 488
v. Hock, 118 Ill. 587, 699
v. Iowa, 94 U. S. 155, 6, 574
v. Jacobs, 110 Ill. 414, 701, 702
v. Jones, 149 Ill. 361, 548
v. Lake, 130 Ill. 42, 1812
v. Langlade Co., 56 Wis. 614, 196, 425, 432
v. Loeb, 118 Ill. 203, 1602, 1608
v. Maher, 91 Ill. 312, 1602
v. Makepeace, 44 Kan. 676, 991
v. McGinnis, 79 Ill. 269, 1706
v. Minnesota &c. R. Co., 14 Fed. 525, 521
v. Moffitt, 75 Ill. 524, 592
v. People, 73 Ill. 541, 1812
v. People, 91 Ill. 251, 1349
v. People, 104 Ill. 256, 1277
v. People, 120 Ill. 104, 1249, 1250
v. People, 79 Ill. App. 529, 515, 590
v. Phillips, 111 Iowa 377, 1284, 1285, 1295, 1299
v. Pinckney, 74 Ill. 277, 983, 988, 996
v. Quaintance, 58 Ill. 389, 1109
v. Siders, 88 Ill. 320, 1288, 1717
v. Smith, 62 Ill. 268, 983
v. South Park Com'rs, 11 Ill. App. 562, 1249
v. Stein, 75 Ill. 41, 1603
v. Sutton, 130 Ind. 405, 1569
v. Town of Kentwood, 49 La. An. 931, 66
v. Town of Lake, 71 Ill. 333, 684, 685
v. Town of Oconto, 50 Wis. 189, 415
v. Village of Elmhurst, 165 Ill. 148, 1248, 1249, 1300, 1303, 1308
v. West Chicago Park Commissioners, 151 Ill. 204, 1349
v. Wiltse, 116 Ill. 449, 591
v. Winters, 65 Ill. App. 435, 540
Chickering v. Robinson, 3 Cush. 543, 334
Chicora v. Crews, 6 S. C. (N. S.) 243, 45
Chicot Co. v. Kruse, 47 Ark. 80, 1525, 1646
Chidsey v. Town of Canton, 17 Conn. 475, 777
Child v. Chappell, 9 N. Y. 246, 1564
v. City of Boston, 4 Allen 41, 821, 1585
v. Colburn, 54 N. H. 71, 344, 359, 361, 363
v. Hudson's Bay Co., 2 P. Wms. 207, 526
Childrey v. Rady, 77 Va. 518, 313
Childs v. Nelson, 69 Wis. 125, 1106, 1322
v. Village of West Troy, 23 Hun 68, 1625
Chilton v. Town of Gratton, 82 Fed. 873, 1011
Chiniquy v. People, 78 Ill. 570, 991
Chinn v. Trustees, 32 Ohio St. 236, 1288
Chin Yan, Ex parte, 60 Cal. 78, 1406
Chirae v. Chirae, 2 Wheat. 259, 132
Chisholm v. City of Montgomery, 2 Woods 584, 838
v. Georgia, 2 Dall. 419, 17, 45, 770
Chittenden v. City of Lansing, 120 Mich. 539, 714
Chittenden v. Wurster, 152 N. Y. 345, 1699, 1820, 1826
v. Wurster, 153 N. Y. 664, 1824
Choate v. City of Buffalo, 57 N. Y. S. 383, 609
v. Inhabitants &c., 13 Gray 92, 1047, 1048
Chope v. City of Eureka, 78 Cal. 588, 788
Chopin v. City of Worcester, 124 Mass. 464, 1178
Chosen Freeholders &c. v. State, 24 N. J. L. 718, 61, 274, 276
Choteau v. Rowse, 56 Mo. 65, 222
Chouteau v. City of Roxbury, 7 Gray 374, 258
Chrisman v. Bruce, 1 Duv. 63, 221
Christensen, In re, 43 Fed. 243, 1400
v. City of Fremont, 45 Neb. 160, 573
Christian v. City of St. Louis, 127 Mo. 109, 1698
Christian Church v. Johnson, 53 Ind. 273, 260
Christian Co. v. Rockwell, 25 Ill. App. 20, 1040
Christman v. Phillips, 58 Hun 282, 842, 1039
Christopher v. Van Liew, 57 Barb. 17, 335
Christy v. Commissioners &c., 41 Ohio St. 711, 664
v. Newton, 60 Barb. 332, 1573
v. Whitmore, 67 Iowa 60, 1087
Chumasero v. Gilbert, 26 Ill. 39, 378
Church v. City of Detroit, 64 Mich. 571, 1341, 1593
v. People, 174 Ill. 366, 1147, 1283, 1291, 1292
v. People, 179 Ill. 205, 1146, 1147, 1153, 1293
v. President &c., 111 Mich. 298, 1326
Churchman v. City of Indianapolis, 110 Ind. 259, 246, 1255
Chytraus v. City of Chicago, 160 Ill. 18, 1148
Cicero Lumber Co. v. Town of Cicero, 176 Ill. 9, 508, 1202, 1316, 1318, 1346, 1347, 1348, 1703, 1709
Cicero &c. R. Co. v. City of Chicago, 176 Ill. 501, 1248
Cihak v. Kiekr, 17 Ill. App. 124, 1564
Cincinnati v. Buckingham, 10 Ohio 257, 534
v. Kasselman, 23 Wk. Law Bul. 392, 1234
v. Morgan, 3 Wall. 275, 1001
v. Penny, 21 Ohio St. 499, 1181
Cincinnati &c. Assurance Co. v. Rosenthal, 55 Ill. 85, 137, 254
Cincinnati Gas Light &c. Co. v. Avondale, 43 Ohio St. 257, 602
Cincinnati &c. R. Co. v. Commissioners &c., 1 Ohio St. 77, 763, 983
v. Incorporated Village of Cumminsville, 14 Ohio St. 523, 590, 682
Citizens' Gas &c. Co. v. Town of Elwood, 114 Ind. 332, 466, 566, 569, 614
Citizens' &c. Ins. Co. v. Sortwell, 8 Allen 217, 273, 291
Citizens' Loan Ass'n v. Lyon, 29 N. J. Eq. 110, 651
Citizens' R. Co. v. Ford, 93 Tex. 110, 518
v. Jones, 34 Fed. 579, 1184, 1351
Citizens' Sav. &c. Ass'n v. Perry Co., 156 U. S. 692, 1000, 1002, 1757
Citizens' &c. R. Co. v. Ballard, 22 Ind. App. 151, 1327, 1359
v. City of Memphis, 53 Fed. 715, 510
City—See also, Common Council; Mayor; Name of City.

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

City v. Lamson, 9 Wall. 477, 643, 959
City &c. v. Alexander, 23 Mo. 483, 982, 983
City Bank v. Bogel, 51 Tex. 355, 1503, 1511
City Council &c., Ex parte, 64 Ala. 463, 1532
v. Ashley Phosphate Co., 38 S. C. 541, 527, 537, 1415, 1420, 1423, 1425
v. Belser, 53 Ala. 379, 543
v. Birdsong, 126 Ala. 632, 1276, 1282, 1290, 1506
v. Capital City Water Co., 92 Ala. 361, 639
v. Chur, 2 Bailey 164, 537
v. Dawson Water-works Co., 106 Ga. 696, 742, 745, 874
v. Dunbar, 50 Ga. 387, 1232, 1499, 1501
v. Dunn, 1 McC. L. 333, 540, 1423
v. Hudson, 94 Ga. 135, 790
v. Hutchinson, 13 Ala. 573, 1093
v. King, 4 McCord 487, 1412, 1418
v. Lombard, 99 Ga. 282, 790
v. Marks, 50 Ga. 612, 704
v. Milwaukee &c. R. Co., 7 Wis. 484, 537
v. Montgomery &c. R. Co., 31 Ala. 76, 646
v. Murphey, 79 Ga. 101, 1200, 1232
v. National Bank, 47 Ga. 562, 1503
v. Owens, 111 Ga. 464, 265
v. Parker, 114 Ala. 118, 505, 549, 1708
v. Pepper, 1 Rich. L. 364, 529, 1412, 1417
v. Port Royal &c. R. Co., 74 Ga. 658, 586
v. Sayer, 65 Ala. 564, 1717
v. Schrameck, 96 Ga. 426, 1211
v. Seeba, 4 Strobh. L. 319, 537
v. State, 38 Ala. 162, 1533
v. Sweeny, 44 Ga. 463, 201
v. Townsend, 84 Ala. 478, 678, 1225, 1226, 1227
v. Walton, 37 Ga. 620, 1503, 1533
v. Walton, 77 Ga. 517, 564
v. Wentworth St. Baptist Church, 4 Strob. 306, 520, 522, 594, 1086
v. Youmans, 85 Ga. 708, 371
City Imp. Co. v. Broderick, 125 Cal. 139, 752
City Item &c. Co. v. City of New Orleans, 51 La. An. 713, 1549, 1732
City of Albany v. McNamara, 117 N. Y. 168, 1062
City of Albia v. Chicago &c. R. Co., 102 Iowa 624, 1164
City of Alleghany v. Western &c. R. Co., 92 Pa. St. 100, 1250
City of Allentown v. Adams, 8 Atl. 430, 1271
City of Alton v. Ætna Ins. Co., 82 Ill. 45, 1542
v. Ill. Transp. Co., 12 Ill. 38, 629
v. Kirsch, 68 Ill. 261, 536, 537
v. Madison Co., 21 Ill. 115, 638
v. Middleton's Heirs, 158 Ill. 542, 1145, 1146
v. Mulledy, 21 Ill. 76, 260, 285, 465
City of Altoona v. Bowman, 171 Pa. St. 307, 477
v. Lotz, 114 Pa. St. 238, 1632
City of Ana v. Boren, 77 Ill. App. 408, 1795
City of Anderson v. Bain, 120 Ind. 254, 1776
v. East, 117 Ind. 126, 264, 820
v. O'Conner, 98 Ind. 168, 1079
City of Antonio v. Antonio St. R. Co., 22 Tex. Civ. App. 148, 932
City of Argentine v. Atchison &c. R. Co., 55 Kan. 730, 727
City of Argentine v. State, 46 Kan. 430, 1160
City of Ashland v. Chicago &c. R. Co., 105 Wis. 398, 586
v. Wheeler, 88 Wis. 607, 510
City of Atchison v. Acheson, 9 Kan. App. 33, 1326, 1331, 1333, 1348
v. Butcher, 3 Kan. 104, 982
v. Challiss, 9 Kan. 603, 1585
v. King, 9 Kan. 550, 488
v. Price, 45 Kan. 296, 1234
v. Twine, 9 Kan. 350, 1394
City of Atlanta v. Champe, 66 Ga. 659, 1614
v. First Presbyterian Church, 86 Ga. 730, 1247
v. Gabbett, 93 Ga. 266, 1260
v. Gates City Gaslight Co., 71 Ga. 106, 1467, 1813
v. Green, 67 Ga. 386, 678
v. Hamlein, 96 Ga. 381, 1296
v. Holiday, 96 Ga. 546, 1369
v. Hunnicutt, 95 Ga. 138, 1211
v. Milam, 95 Ga. 135, 1341
City of Atlantic City v. Groff, 64 N. J. L. 527, 1315
City of Auburn v. Paul, 84 Maine 212, 1177
City of Augusta v. Hafers, 61 Ga. 48, 1617
v. North, 57 Maine 392, 458, 1532
City of Aurora v. Colshire, 55 Ind. 484, 1596
v. Fox, 78 Ind. 1, 1255, 1425
v. Hillman, 90 Ill. 61, 1618, 1620, 1634, 1641
v. McGannon, 138 Mo. 38, 1506, 1507
v. Reed, 57 Ill. 29, 680
v. Scott, 185 Ill. 539, 1801
v. Scott, 82 Ill. App. 616, 1796
v. West, 22 Ind. 88, 982, 990, 1010, 1027
v. West, 22 Ind. 503, 982, 1010
City of Austin v. Austin Cemetery Ass'n, 87 Tex. 330, 599, 1703
v. Austin City Cemetery Ass'n, 28 S. W. 1023, 506
v. Austin Gas-light &c. Co., 69 Tex. 180, 1512, 1520, 1547
v. Colgate, 27 S. W. 896, 1360
v. Johns, 62 Tex. 179, 182
v. Ritz, 72 Tex. 391, 1618, 1628, 1629
v. Walton, 68 Tex. 507, 182, 538
City of Ballard v. Thompson, 21 Wash. 669, 326
City of Bangor v. Inhabitants &c., 71 Maine 535, 1063
City of Bedford v. Neal, 143 Ind. 425, 1327, 1639
v. Woody, 23 Ind. App. 401, 1789, 1792, 1793
City of Belleville v. Citizens' Horse R. Co., 152 Ill. 171, 520, 1812
City of Belton v. Sterling, 50 S. W. 1027, 712, 742
v. Turner, 27 S. W. 831, 1339, 1376
City of Belvidere v. Crichton, 81 Ill. App. 595, 1337
City of Bethany v. Howard, 149 Mo. 504, 1752
City of Big Rapids v. Combstock, 65 Mich. 78, 1106
City of Binghamton v. Binghamton &c. R. Co., 61 Hun 479, 1183
City of Blair v. Santry, 21 Neb. 247, 901
City of Bloomington v. Bay, 42 Ill. 503, 1355, 1596
v. Brokaw, 77 Ill. 194, 1530
v. Chicago &c. R. Co., 134 Ill. 451, 1155, 1149, 1235, 1250, 1253, 1300

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Bloomington v. Costello, 65 Ill. App. 407, 1107, 1775
v. Dankwardt, 73 Iowa 170, 1403
v. Latham, 142 Ill. 462, 1149, 1211
v. Pollock, 141 Ill. 346, 465, 1151, 1211, 1219, 1222, 1223
v. Reeves, 177 Ill. 161, 1134, 1147, 1279
v. Smith, 123 Ind. 41, 1012
v. Wahl, 46 Ill. 489, 100, 1403
v. Wilson, 14 Ind. App. 476, 825
City of Bluffton v. McAfee, 23 Ind. App. 112, 1339
City of Bolden v. Fowler, 11 Colo. 396, 1177
City of Bonham v. Taylor, 81 Tex. 59, 641, 918
City of Booneville v. Ormrod, 26 Mo. 193, 1571
City of Boston v. Baldwin, 139 Mass. 315, 1417
v. Boston &c. R. Co., 170 Mass. 95, 1271
v. Coon, 175 Mass. 283, 1752
v. Inhabitants &c., 4 Cush. 538, 1422
v. Richardson, 13 Allen 146, 586
v. Shaffer, 9 Pick. 415, 1404
v. Shaw, 1 Met. 130, 500, 505
v. Simmons, 150 Mass. 461, 211, 219
City of Boulder v. Niles, 9 Colo. 415, 265, 1594, 1605, 1629
City of Bowling Green v. Carson, 10 Bush 64, 100, 1402
City of Bradford v. Fox, 171 Pa. St. 343, 1286
City of Brazil v. McBride, 69 Ind. 244, 174, 201
City of Brenham v. Brenham Water Co., 67 Tex. 542, 567, 640, 641, 1451
City of Bridgeport v. Housatonic R. Co., 15 Conn. 475, 233, 645, 763, 982, 983, 992
v. New York &c. R. Co., 36 Conn. 255, 592, 1246, 1250
City of Brockton v. Cross, 138 Mass. 297, 940
City of Broken Bow v. Broken Bow Water-works Co., 57 Neb. 548, 731
City of Brooklyn v. Breslin, 57 N. Y. 591, 468, 500, 505, 547, 552, 1405
v. Brooklyn &c. R. Co., 47 N. Y. 475, 1345, 1598
v. Cleves, 1 Hill & D. 231, 528
v. Furey, 30 N. Y. S. 349, 596, 599, 611
v. Nassau &c. R. Co., 61 N. Y. S. 33, 1386
City of Brownville v. Cook, 4 Neb. 101, 536
City of Bryan v. Page, 51 Tex. 532, 240, 260, 464, 644, 663
City of Buffalo, In re, 18 N. Y. S. 771, 1415
v. Chadeayne, 134 N. Y. 163, 595
v. Collins Baking Co., 57 N. Y. S. 347, 503
v. Schliefer, 25 Hun 275, 536
City of Burlington v. Bumgardner, 42 Iowa 673, 1509, 1532
v. Burlington &c. R. Co., 41 Iowa 134, 1532
v. Burlington &c. R. Co., 49 Iowa 144, 510, 522
v. Dankwardt, 73 Iowa 170, 621, 1402
v. Dennison, 42 N. J. L. 165, 464, 1091
v. Gilbert, 31 Iowa 356, 650, 1224, 1259
v. Kellar, 18 Iowa 59, 97, 468, 530, 531
v. Lawrence, 42 Iowa 681, 112
City of Burlington v. Putnam Ins. Co., 31 Iowa 102, 465, 1507
v. Quick, 47 Iowa 222, 1262
v. Stockwell, 5 Kan. App. 569, 1110
City of Butte v. Cohen, 9 Mont. 435, 315
City of Cadillac v. Woonsocket Inst., 7 C. C. A. 574, 1002, 1013, 1757
City of Cairo v. Adams Exp. Co., 54 Ill. App. 87, 603
v. Allen, 3 Ill. App. 398, 1530
v. Bross, 101 Ill. 475, 581
v. Coleman, 53 Ill. App. 680, 550, 604
City of Caldwell v. Prunelle, 57 Kan. 511, 792
City of Camden v. Allen, 26 N. J. L. 398, 458, 530
City of Canton v. Nist, 9 Ohio St. 439, 97, 468, 494
v. Wagner, 54 Ohio St. 329, 1141
City of Cape Girardeau v. Fougen, 30 Mo. App. 551, 464
v. Riley, 52 Mo. 424, 485
v. Riley, 72 Mo. 220, 494, 500
City of Cape May v. Cape May &c. R. Co., 60 N. J. L. 224, 507, 1365
v. Cape May Transp. Co., 64 N. J. L. 80, 1388, 1548, 1784
City of Carlinville v. McClure, 156 Ill. 492, 1144, 1151
City of Carlyle v. Clinton Co., 140 Ill. 512, 854, 1235
City of Carlysle v. Carlysle Water &c. Co., 52 Ill. App. 577, 733
City of Carrollton v. Bazzette, 159 Ill. 284, 502, 503
v. Clark, 21 Ill. App. 74, 296
City of Carthage v. Badgley, 73 Mo. App. 123, 1786, 1788, 1792
City of Cassville v. Jimerson, 75 Mo. App. 426, 528
City of Cedar Rapids v. Bechtel, 110 Iowa 196, 876
City of Centerville v. Miller, 57 Iowa 56, 526
City of Central v. Sears, 2 Colo. 588, 177, 464, 465
City of Champaign v. Forrester, 29 Ill. App. 117, 1177
v. Harmon, 98 Ill. 491, 565
v. Jones, 132 Ill. 304, 1609
City of Chariton v. Barber, 54 Iowa 360, 606
v. Holliday, 60 Iowa 391, 297
City of Charleston v. Cadle, 166 Ill. 487, 1296, 1310
v. Reed, 27 W. Va. 681, 594, 1392
City of Charlestown v. Commissioners, 109 Mass. 270, 706, 707, 1724
City of Charlotte v. Shepard, 120 N. C. 411, 1549
v. Shepard, 122 N. C. 602, 986
City of Cherokee v. Fox, 34 Kan. 16, 536, 1395
City of Chester v. Black, 132 Pa. St. 568, 593, 1160
v. Eyre, 181 Pa. St. 642, 515, 1147, 1246
v. Pennell, 169 Pa. St. 300, 1298
v. Wabash &c. R. Co., 182 Ill. 382, 586
City of Chicago v. Baer, 41 Ill. 306, 1248, 1266
v. Baker, 98 Fed. 830, 1779, 1798
v. Baptist Theological Union, 115 Ill. 245, 1498
v. Barbian, 80 Ill. 482, 705
v. Bartel, 100 Ill. 61, 1395
v. Brophy, 79 Ill. 277, 1620
v. Burcky, 158 Ill. 103, 1318
v. Colby, 20 Ill. 614, 1246

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

City of Chicago v. Collins, 175 Ill. 445, 1348, 1697, 1699, 1702
v. Dalle, 115 Ill. 386, 826, 1614
v. Duffy, 179 Ill. 447, 737
v. Edwards, 58 Ill. 252, 205
v. English, 180 Ill. 476, 1798, 1806
v. English, 80 Ill. App. 163, 1033, 1804
v. Evans, 24 Ill. 52, 1703
v. Ferris Wheel Co., 60 Ill. App. 384, 1703
v. Fidelity Bank, 11 Ill. App. 165, 1725, 1726
v. Fitzgerald, 75 Ill. App. 174, 1327
v. Frazer, 60 Ill. App. 404, 712
v. Gage, 95 Ill. 593, 211, 309, 313
v. Gallagher, 44 Ill. 295, 1584
v. Galpin, 183 Ill. 399, 714, 881
v. Hasley, 25 Ill. 485, 1530, 1743
v. Hay, 75 Ill. 530, 1612
v. Jackson, 88 Ill. App. 130, 1772, 1774
v. Johnson, 53 Ill. 91, 1620
v. Keefe, 114 Ill. 222, 1595
v. Kohlhof, 64 Ill. App. 349, 1316
v. Laflin, 49 Ill. 172, 1093, 1110
v. Langlass, 66 Ill. 361, 1584
v. Larned, 34 Ill. 203, 1168, 1268, 1514
v. Law, 144 Ill. 569, 1165
v. Manhattan Cement Co., 178 Ill. 372, 1394, 1395
v. McCarthy, 75 Ill. 602, 1615
v. McCoy, 136 Ill. 344, 486
v. McDonald, 176 Ill. 404, 878, 880, 881
v. McDonald, 57 Ill. App. 250, 1316
v. McLean, 133 Ill. 148, 1636
v. Netcher, 183 Ill. 104, 492, 1387
v. Nichols, 177 Ill. 97, 1129, 1130, 1699, 1700
v. People, 56 Ill. 327, 931, 1306, 1780
v. Powers, 42 Ill. 169, 1578, 1617
v. Quimby, 38 Ill. 274, 535
v. Richardson, 75 Ill. App. 198, 1802
v. Roth, 26 Ill. 456, 1757
v. Rumpff, 45 Ill. 90, 568, 614, 642
v. Sawyer, 166 Ill. 290, 1314, 1758
v. Seben, 165 Ill. 371, 787
v. Seben, 62 Ill. App. 248, 1377
v. Sexton, 115 Ill. 230, 1757
v. Shober &c. Co., 6 Ill. App. 560, 926
v. Stratton, 162 Ill. 494, 548, 549, 551, 1105, 1393, 1394
v. Stratton, 58 Ill. App. 539, 505
v. Trotter, 136 Ill. 430, 500, 508, 605
v. Turner, 80 Ill. 419, 789
v. Union Bldg. Ass'n, 102 Ill. 379, 678, 1703
v. Union Stock Yards Co., 164 Ill. 224, 1349
v. Weir, 165 Ill. 582, 739
v. Williams, 182 Ill. 135, 711, 916, 1753
v. Williams, 80 Ill. App. 33, 732, 916
v. Wright, 32 Ill. 192, 1254, 1533
v. Wright, 69 Ill. 318, 571, 1697
City of Chillicothe v. Brown, 38 Mo. App. 609, 603, 1402
City of Cincinnati v. Bryson, 15 Ohio 625, 1232, 1397
v. Buckingham, 10 Ohio 257, 532, 1402
v. Cameron, 33 Ohio St. 336, 547
v. Guckenberger, 60 Ohio St. 353, 733, 872
v. Gwynne, 10 Ohio 192, 536, 1412
v. Janes, 55 Ohio St. 180, 1705
v. Penny, 21 Ohio St. 499, 1602
City of Cincinnati v. Seasongood, 46 Ohio St. 296, 1256
v. Sherike, 47 Ohio St. 217, 1138
v. Stone, 5 Ohio St. 38, 1779
City of Circleville v. Sohn, 59 Ohio St. 285, 1338, 1359
City of Cleburne v. Brown, 73 Tex. 443, 640
v. Gulf &c. R. Co., 66 Tex. 457, 578
City of Cleveland v. Cleveland &c. R. Co., 93 Fed. 113, 592, 1321
v. King, 132 U. S. 295, 817
v. State Bank &c., 16 Ohio St. 236, 233
v. Wick, 18 Ohio St. 303, 1234
City of Clinton v. Cedar Rapids &c. R. Co., 24 Iowa 455, 103
v. Phillips, 58 Ill. 102, 500
v. Walliker, 98 Iowa 655, 879, 881, 1149
City of Cohoes v. President &c., 47 N. Y. St. 612, 1558, 1561
City of Coldwater v. Tucker, 36 Mich. 474, 1174, 1536
City of Columbus v. Hydraulic Woollen Mills Co., 33 Ind. 435, 680
v. Ogletree, 96 Ga. 177, 1326, 1335
v. Storey, 35 Ind. 97, 1255
v. Street R. Co., 45 Ohio St. 98, 1509
City of Concordia v. Hagaman, 1 Kan. App. 35, 742
City of Connersville v. Hydraulic Co., 86 Ind. 184, 960
v. Merrill, 14 Ind. App. 303, 1145
City of Conyers v. Kirk, 78 Ga. 480, 896, 1463
City of Coolidge v. General Hospital Soc. &c., 9 Kan. App. 891, 998
City of Corpus Christi v. Central W. & W. Co., 8 Tex. Civ. App. 94, 735
City of Corsicana v. Tobin, 23 Tex. Civ. App. 492, 1805
City of Corvallis v. Carlile, 10 Or. 139, 497
City of Council Bluffs v. Stewart, 51 Iowa 385, 890
City of Covington v. Arthur, 12 Ky. L. 163, 1514
v. Boyle, 6 Bush 204, 1267
v. Casey, 3 Bush 698, 1258
v. Commonwealth, 19 Ky. L. 105, 1504
v. Elliott, 21 Ky. L. 895, 1783
v. Ludlow, 1 Met. 295, 295, 1425, 1427
v. McKenna, 99 Ky. 508, 729
v. Powell, 2 Met. 226, 1503, 1725
v. Southgate, 15 B. Mon. 491, 393, 1517
City of Crawfordsville v. Bond, 96 Ind. 236, 1179, 1619
v. Braden, 130 Ind. 149, 552, 575, 576
City of Cynthiana v. Board &c., 21 Ky. L. 731, 1554, 1764
City of Dallas v. Atkins, 32 S. W. 780, 1286
v. Beeman, 23 Tex. Civ. App. 315, 411, 1780, 1781
v. Cooper, 34 S. W. 321, 793
v. Ellison, 10 Tex. Civ. App. 28, 1286
v. Emerson, 36 S. W. 304, 1309
v. Jones, 93 Tex. 38, 1330, 1340, 1359, 1793, 1801
v. Jones, 54 S. W. 606, 1796
v. Kahn, 9 Tex. Civ. App. 19, 1219
v. McAllister, 39 S. W. 173, 1713
v. Meyers, 55 S. W. 742, 1361, 1375, 1796
v. Leake, 34 S. W. 338, 1211

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

City of Dallas v. Webb, 22 Tex. Civ. App. 48, 1325, 1802, 1803
v. Western Electric Co., 83 Tex. 243, 1745
City of Danville v. Danville Water Co., 180 Ill. 235, 573, 877, 926, 931
v. McAdams, 153 Ill. 216, 1146
v. Mitchell, 63 Ill. App. 647, 1744
City of Davenport v. Bird, 34 Iowa 524, 535, 1420
v. Kelley, 7 Iowa 102, 1403
v. Peoria &c. Ins. Co., 17 Iowa 276, 457, 1529
v. Stevenson, 34 Iowa 225, 264
City of Dayton v. Robert, 8 Ohio C. C. 649, 1707
v. Taylor, 62 Ohio St. 11, 1335, 1804
City of Decatur v. Stoops, 21 Ind. App. 397, 1330
City of Delphi v. Bowen, 61 Ind. 29, 1722
v. Evans, 36 Ind. 90, 299, 300, 464 477, 1233, 1258, 1421, 1425, 1426
v. Lowery, 74 Ind. 520, 1422, 1578, 1617
v. Startzman, 104 Ind. 343, 651
City of Denison v. Foster, 28 S. W. 1052, 1756
City of Denver v. Aaron, 6 Colo. App. 232, 1335, 1375
v. Bach, 26 Colo. 530, 502
v. Bayer, 7 Colo. 113, 1652
v. Baldasari, 61 Pac. 397, 1375
v. Beede, 25 Colo. 172, 1710
v. Brown, 11 Colo. 337, 1745
v. Capelli, 4 Colo. 25, 1208
v. Deane, 10 Colo. 375, 1621
v. Dunsmore, 7 Colo. 328, 1375
v. Girard, 21 Colo. 447, 492, 652, 1319, 1758
v. Hickey, 9 Colo. App. 137, 1346
v. Johnson, 8 Colo. App. 384, 1333
v. Knowles, 17 Colo. 204, 1230, 1268
v. Moewes, 15 Colo. App. 28, 1374
v. Mullen, 7 Colo. 345, 1117
v. Rhodes, 9 Colo. 554, 1207, 1217
v. Saulcey, 5 Colo. App. 420, 1333
v. Sherret, 88 Fed. 226, 1361
v. Williams, 12 Colo. 475, 1592
City of Depere v. Hibbard, 104 Wis. 666, 1339, 1804
City of Des Moines v. Chicago &c. R. Co., 41 Iowa 567, 522, 1510
v. Gilchrist, 67 Iowa 210, 1121, 1392
v. Layman, 21 Iowa 153, 698
v. Rice, 40 Iowa 638, 1802
City of Detroit v. Beckman, 34 Mich. 125, 1215, 1344, 1586
v. Blackeby, 21 Mich. 84, 8, 9, 814, 1341, 1592
v. Board &c., 108 Mich. 494, 573
v. Chaffee, 70 Mich. 80, 1589
v. Corey, 9 Mich. 165, 1546
v. Daly, 68 Mich. 503, 587, 1253
v. Detroit Citizens' St. R. Co., 64 Fed. 628, 1350
v. Detroit City R. Co., 37 Mich. 558, 1852
v. Detroit &c. Plank R. Co., 43 Mich. 140, 595
v. Ft. Wayne &c. R. Co., 90 Mich. 646, 1355
v. Hosmer, 79 Mich. 384, 1464, 1672
v. Martin, 34 Mich. 170, 245, 247, 1263, 1552
v. Putnam, 45 Mich. 263, 814, 1341, 1593
v. Weber, 29 Mich. 24, 322
City of Dubuque v. Chicago &c. R. Co., 47 Iowa 196, 1534
City of Dubuque v. Illinois Cent. R. Co., 39 Iowa 56, 1510
v. Northwestern &c. Ins. Co., 29 Iowa 9, 1501, 1509, 1513
v. Rebman, 1 Iowa 444, 1414, 1418
City of Duluth v. Krupp, 46 Minn. 435, 1395
v. Mallet, 43 Minn. 204, 590, 1357
v. McDonnell, 61 Minn. 288, 1754
City of Dunkirk v. Wallace, 19 Ind. App. 298, 743
City of Dunleith v. Reynolds, 53 Ill. 45, 1499
City of Duquoin v. Kelly, 176 Ill. 218, 1554
City of Durango v. Remsberg, 16 Colo. 327, 1420
City of East Dallas v. State, 73 Tex. 370, 391, 402
City of East St. Louis v. Board &c., 6 Ill. App. 130, 1528
v. Donahue, 77 Ill. App. 574, 1327
v. East St. Louis Gas-light Co., 98 Ill. 415, 639, 649, 848, 877, 889
v. Flannigan, 26 Ill. App. 449, 219, 848, 887
v. Flannigan, 34 Ill. App. 596, 903
v. Flannigen, 36 Ill. App. 50, 922
v. Maxwell, 99 Ill. 439, 106, 107
v. O'Flynn, 119 Ill. 200, 1320
v. People, 124 Ill. 655, 893
v. Rhein, 139 Ill. 116, 396
v. St. John, 47 Ill. 463, 684
v. Thomas, 11 Ill. App. 283, 282
v. Trustees &c., 102 Ill. 489, 1509
v. Wehrung, 50 Ill. 28, 281, 547, 1539
City of Effingham v. Surrells, 77 Ill. App. 460, 1780
City of Elgin v. Eaton, 83 Ill. 535, 1224, 1385, 1602
v. Hoag, 25 Ill. App. 650, 1177
City of Elizabeth v. Force, 29 N. J. Eq. 587, 1027
v. New Jersey R. Co., 53 N. J. L. 491, 1566
City of Elkhart v. Simonton, 71 Ind. 7, 699
v. Wickwire, 121 Ind. 331, 1201, 1288
City of Elk Point v. Vaughn, 1 Dak. 113, 111, 495, 496, 1401
City of Ellsworth v. Rossiter, 46 Kan. 237, 177, 743
City of Emporia v. Gilchrist, 37 Kan. 532, 1161
v. Norton, 16 Kan. 236, 485
v. Schmidling, 33 Kan. 485, 1625, 1627
v. Smith, 42 Kan. 433, 384, 393
v. Soden, 25 Kan. 588, 688
v. Volmer, 12 Kan. 622, 535
v. Wagoner, 6 Kan. App. 659, 505
City of Enterprise v. Fowler, 38 Kan. 415, 935
City of Erie, Appeal of, 91 Pa. St. 398, 883, 889
v. Caulkins, 85 Pa. St. 247, 1779
v. Erie Canal Co., 59 Pa. St. 174, 81
v. First Universalist Church, 105 Pa. St. 278, 1247
v. Knapp, 29 Pa. St. 173, 1745
v. Magill, 101 Pa. St. 616, 1639
v. Phelps, 56 Kan. 135, 1334
v. Piece of Land &c., 175 Pa. St. 523, 1250
City of Eufaula v. McNab, 67 Ala. 588, 233
City of Eureka v. Jackson, 8 Kan. App. 49, 520
v. Wilson, 15 Utah 53, 1363

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Evansville v. Decker, 84 Ind. 325, 1177, 1179
v. Dennett, 161 U. S. 434, 1005, 1010
v. Frazer, 24 Ind. App. 628, 1360, 1376
v. Hall, 14 Ind. 27, 1511
v. Martin, 41 Ind. 145, 503
v. Miller, 146 Ind. 613, 515
v. Page, 23 Ind. 525, 392
v. Pfisterer, 34 Ind. 36, 1723
v. State, 188 Ind. 426, 1432, 1433, 1443, 1532
City of Faribault v. Wilson, 34 Minn. 254, 537
City of Fairfield v. Hornick, 53 Ill. App. 558, 1333
v. Ratcliffe, 20 Iowa 396, 1232
City of Fayette v. Shafroth, 25 Mo. 445, 1412
City of Fayetteville v. Carter, 52 Ark. 301, 1405
City of Fergus Falls v. Fergus Falls Hotel Co., 80 Minn. 165, 650
City of Findlay v. Pendleton, 62 Ohio St. 80, 712, 729
v. Pertz, 66 Fed. 427, 714
City of Flora v. Naney, 136 Ill. 45, 1743
v. Pruett, 81 Ill. App. 161, 1802
City of Fort Dodge v. Moore, 37 Iowa 388, 1546
City of Fort Madison v. Moore, 109 Iowa 476, 713, 754
City of Fort Scott v. Peck, 5 Kan. App. 593, 793, 794
City of Fort Wayne v. Breese, 123 Ind. 581, 1631
v. Cody, 43 Ind. 197, 1253
v. De Witt, 47 Ind. 391, 1624, 1625
v. Lehr, 88 Ind. 62, 233, 1541
v. Shoaff, 106 Ind. 66, 616, 1199, 1288
City of Fort Worth v. Crawford, 64 Tex. 202, 264
v. Davis, 57 Tex. 225, 1255
v. Shero, 16 Tex. Civ. App. 487, 928
City of Frankfort v. Aughe, 114 Ind. 77, 497
City of Freeport v. Isbell, 83 Ill. 440, 225
City of Fulton v. Northern Ill. Coll., 158 Ill. 333, 741
City of Galena v. Amy, 5 Wall. 705, 1523
v. Corwith, 48 Ill. 423, 977, 1021
City of Galesburg v. Galesburg Water Co., 34 Fed. 675, 746
v. Hawkinson, 75 Ill. 152, 91, 1519
v. Searles, 114 Ill. 217, 1143, 1167, 1513
City of Galveston v. Hemmis, 72 Tex. 558, 1639
v. Morton, 58 Tex. 409, 715
v. Posnainsky, 62 Tex. 118, 8, 9, 11, 265, 266, 813
v. Sydnor, 39 Tex. 236, 1551
City of Geneseo v. Geneseo &c. Co., 55 Kan. 358, 609, 734, 735
City of Geneva v. Geneva Tel. Co., 62 N. Y. S. 172, 1390
City of Gladstone v. Throop, 71 Fed. 341, 1018
City of Goshen v. Alford, 154 Ind. 58, 1789, 1805
v. Croxton, 34 Ind. 239, 535
v. England, 119 Ind. 368, 1627
v. Kern, 63 Ind. 468, 537
v. Myers, 119 Ind. 196, 1578, 1579
City of Grand Rapids v. Blakely, 40 Mich. 367, 245, 1716
v. Brandy, 105 Mich. 670, 604, 605
v. De Vries, 123 Mich. 570, 726, 1392
v. Grand Rapids Hydraulic Co., 66 Mich. 606, 1451, 1452
City of Grand Rapids v. Grand Rapids &c. R. Co., 33 N. W. 15, 637
v. Hughes, 15 Mich. 54, 526
v. Loose, 92 Mich. 92, 1156
v. Newton, 111 Mich. 48, 501
v. Norman, 110 Mich. 544, 524
v. Wyman, 46 Mich. 576, 1614, 1621
City of Greeley v. Hamman, 12 Colo. 94, 541, 542
v. Hamman, 17 Colo. 30, 1421, 1422
City of Green Bay v. Brauns, 50 Wis. 204, 300, 477
City of Greensboro v. McGibbony, 93 Ga. 672, 1362
City of Greensburgh v. Corwin, 58 Ind. 518, 535
City of Greenville v. Greenville Water Works Co., 125 Ala. 625, 716, 724, 737
v. Kemis, 58 S. C. 427, 1383
City of Guthrie v. T. W. Harvey Lumber Co., 9 Okla. 464, 71
v. Wylie, 6 Okla. 61, 70, 733
City of Hagerstown v. Witmer, 86 Md. 293, 1105
City of Hamilton v. Ashbrook, 62 Ohio St. 511, 612
City of Hammond v. Evans, 23 Ind. App. 501, 951
City of Hannibal v. Price, 29 Mo. App. 280, 1396
v. Richards, 82 Mo. 330, 1079
City of Harrisburg v. McCormick, 129 Pa. St. 213, 593, 1160, 1252
v. Segelbaum, 151 Pa. St. 172, 1195
v. Sheek, 104 Pa. St. 53, 107
v. Shepler, 190 Pa. St. 374, 715, 726, 730, 872, 1132, 1273
City of Hartford v. Graves, 8 Kan. App. 677, 1365
v. Hartford Electric L. Co., 65 Conn. 324, 724, 752
v. Talcott, 48 Conn. 525, 1588
v. West Middle District, 45 Conn. 462, 1247
City of Harvard v. Crouch, 47 Neb. 133, 1211, 1380
City of Helena v. Gray, 7 Mont. 486, 506, 1401
v. Harvey, 6 Mont. 114, 696
v. Mills, 94 Fed. 916, 873
v. Turner, 36 Ark. 577, 650
City of Henderson v. Clayton, 57 S. W. 1, 790
v. Lambert, 8 Bush 607, 387, 1513
v. White, 49 S. W. 764, 1325
City of Holyoke v. Hadley &c. Co., 174 Mass. 424, 1752, 1798
City of Honey Grove v. Lamster, 50 S. W. 1053, 1785
City of Hopkins v. Kansas City &c. Co., 79 Mo. 98, 1683
City of Houston v. Emery, 76 Tex. 282, 321, 1738
City of Humboldt v. McCoy, 23 Kan. 249, 490
City of Huntingburg v. First, 22 Ind. App. 66, 1335, 1787, 1803
City of Huntington v. Boyd, 25 Ind. App. 250, 1787, 1793
v. Breen, 77 Ind. 29, 1632
v. Burke, 12 Ind. App. 133, 1788, 1789
v. Cheesbro, 57 Ind. 74, 538
v. First, 22 Ind. App. 66, 1317, 1330
v. Force, 152 Ind. 368, 738
v. McClurg, 22 Ind. App. 261, 1330, 1339, 1793
v. Pease, 56 Ind. 305, 537, 538
City of Huron v. Meyers, 13 S. D. 420, 220

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Huron v. Second Ward Sav. Bank, 86 Fed. 272, 1005, 1011, 1757, 1758
City of Independence v. Gates, 110 Mo. 374, 1205, 1206
v. Moore, 32 Mo. 392, 526
v. Trouvalle, 15 Kan. 70, 540, 1424
City of Indianapolis v. Consumers' Gas &c. Co., 140 Ind. 107, 718
v. Cook, 99 Ind. 10, 1609
v. Emmelman, 108 Ind. 530, 795
v. Gaston, 58 Ind. 224, 1580, 1639
v. Holt, 155 Ind. 222, 1276, 1506
v. Huegele, 115 Ind. 581, 496, 498
v. Huffer, 30 Ind. 235, 1179
v. Imberry, 17 Ind. 175, 465, 1191, 1425
v. Indianapolis Gas Light &c. Co., 66 Ind. 396, 103, 254, 282, 568, 1038, 1465
v. Kingsbury, 101 Ind. 200, 693
v. Lawyer, 38 Ind. 348, 1179
v. Mann, 144 Ind. 175, 714, 874
v. Mansur, 15 Ind. 112, 1234
v. McAvoy, 86 Ind. 587, 244
v. Miller, 27 Ind. 394, 1115
v. Patterson, 112 Ind. 344, 390
v. Ritzinger, 24 Ind. App. 65, 1552, 1553, 1755
v. Scott, 72 Ind. 196, 1625
v. Vajen, 111 Ind. 240, 1552
City of Indianola v. Gulf &c. R. Co., 56 Tex. 594, 1352
v. Jones, 29 Iowa 282, 299, 477
City of Iola v. Sugg, 8 Kan. App. 529, 1406
City of Jackson v. Newman, 59 Miss. 385, 1263, 1552
City of Jacksonville v. Akers, 11 Ill. App. 393, 1494
v. Allen, 25 Ill. App. 54, 200, 1445
v. Hamill, 178 Ill. 235, 1272, 1273
v. Jacksonville R. Co., 67 Ill. 450, 629
v. Ledwith, 26 Fla. 163, 580, 666
v. L'Engle, 20 Fla. 344, 426
v. Loan, 65 Ill. App. 218, 1774
v. Smith, 78 Fed. 292, 1375
City of Janesville v. Carpenter, 77 Wis. 288, 558
v. Markoe, 18 Wis. 350, 106, 108
v. Milwaukee &c. R. Co., 7 Wis. 484, 539, 658
City of Jefferson v. Whipple, 76 Mo. 519, 1544
City of Jeffersonville v. Myers, 2 Ind. App. 532, 1210, 1221, 1741
v. Patterson, 26 Ind. 16, 1020
City of Joliet v. Blower, 155 Ill. 414, 1219
v. Johnson, 177 Ill. 178, 1333, 1334, 1341, 1793
v. Looney, 159 Ill. 471, 1334
v. Verby, 35 Ill. 58, 1596
City of Joplin v. Lecke, 78 Mo. App. 8, 1389
City of Junction City v. Blades, 1 Kan. App. 85, 1786
v. Webb, 44 Kan. 71, 524
City of Kalamazoo v. Kalamazoo Heat &c. Co., 124 Mich. 74, 513, 1813
City of Kankakee v. Potter, 119 Ill. 324, 509, 511, 512
City of Kansas v. Baird, 98 Mo. 215, 1206, 1568
v. Clark, 68 Mo. 588, 521
v. Collins, 34 Kan. 434, 1395
v. Flanagan, 69 Mo. 22, 536
v. Hill, 80 Mo. 523, 698
v. Kansas City R. Co., 102 Mo. 633, 1379
v. McAleer, 31 Mo. App. 433, 1119
v. Payne, 71 Mo. 159, 1544
City of Kansas v. Vindquest, 36 Mo. App. 584, 1389
v. White, 69 Mo. 26, 521
v. Zahner, 73 Mo. App. 396, 110, 1786
City of Kansas City v. Gray (Kan.), 61 Pac. 746, 1285
v. Grubel, 57 Kan. 436, 519
v. Hanson, 60 Kan. 833, 720, 725, 726
v. Hart, 60 Kan. 684, 1375
v. Kimball, 60 Kan. 224, 1134, 1276
v. Marsh Oil Co., 140 Mo. 458, 89, 110, 1146
v. McDonald, 60 Kan. 481, 503, 1326, 1331, 1363, 1753, 1797
v. O'Connell, 99 Mo. 357, 1176, 1368
v. Orr, 62 Kan. 61, 1361, 1375
v. Stegmiller, 151 Mo. 189, 106, 113, 117
v. Trotter, 9 Kan. App. 222, 1235
v. Wyandotte Gas Co., 9 Kan. App. 325, 647, 872
City of Kearney v. Downing, 59 Neb. 549, 882
v. Thoemason, 25 Neb. 147, 1179, 1370
City of Keokuk v. Independent Dist., 53 Iowa 352, 1588
v. Scroggs, 39 Iowa 447, 1121, 1392
City of Kingston v. Terry, 53 N. Y. S. 652, 1781
City of Kinmundy v. Mayhan, 72 Ill. 462, 282, 531, 547
City of Knoxville v. Chicago &c. R. Co., 83 Iowa 636, 526, 608
City of Kokomo v. Boring, 24 Ind. App. 552, 1327
v. Mahan, 100 Ind. 242, 1177, 1190, 1224, 1233, 1301
City of La Crosse v. Town of Melrose, 22 Wis. 459, 1623
City of Laddonia v. Poor, 73 Mo. App. 465, 505
City of Lafayette v. Asylum, 4 La. An. 1, 1247
v. Blood, 40 Ind. 62, 1624
v. Cox, 5 Ind. 38, 88, 982
v. Cummins, 3 La. An. 673, 1520
v. Fowler, 34 Ind. 140, 1233
v. James, 92 Ind. 240, 319
v. Jenners, 10 Ind. 70, 54
v. Nagle, 113 Ind. 425, 1776
v. Shultz, 44 Ind. 97, 705
v. State, 69 Ind. 218, 368
v. Timberlake, 88 Ind. 330, 264, 774, 815, 820
v. Wortman, 107 Ind. 404, 1224
City of Lamar v. Weidman, 57 Mo. App. 507, 502, 520
City of Lampasas v. Talcott, 97 Fed. 457, 977
City of Lansing v. Toolan, 37 Mich. 152, 1586
v. Van Gorder, 24 Mich. 456, 1748
City of Lake View v. Tate, 130 Ill. 247, 1148, 1357
City of Laporte v. Gamewell &c. Co., 146 Ind. 466, 880
City of Laredo v. Macdonell, 52 Tex. 511, 644
v. Nalle, 65 Tex. 359, 1746
City of Lawrence v. Davis, 8 Kan. App. 225, 1339
v. Littel, 9 Kan. App. 130, 1790, 1793, 1801, 1804
v. Webster, 167 Mass. 513, 1140, 1241
City of Lead v. Klatt, 13 S. D. 140, 499, 528

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

City of Leadville v. Matthews, 10 Colo. 125, 172
City of Leavenworth v. Mills, 6 Kan. 288, 741, 1306, 1748
v. Norton, 1 Kan. 432, 1535
v. Rankin, 2 Kan. 358, 233, 255, 646
v. Stille, 13 Kan. 539, 741
City of Lebanon v. Twiford, 13 Ind. App. 384, 1370
City of Lexington v. Aull, 30 Mo. 480, 1513
v. Butler, 14 Wall. 282, 959, 1000, 1001, 1016, 1018
v. Headley, 5 Bush 508, 540, 1227, 1254, 1421, 1425
v. McQuillan, 9 Dana 513, 1271
v. Rennick, 20 Ky. L. 1924, 174
City of Lincoln v. Pirner, 59 Neb. 634, 1334, 1336, 1339
v. O'Brien, 56 Neb. 761, 930, 1338
v. Smith, 28 Neb. 762, 1598
v. Walker, 18 Neb. 244, 1330
v. Woodward, 19 Neb. 259, 1614
City of Linneus v. Duskey, 19 Mo. App. 20, 607
City of Litchfield v. Whitenack, 78 Ill. App. 364, 1107, 1112
City of Littlefield v. Anglim, 83 Ill. App. 65, 1803
City of Little Rock v. Board &c., 42 Ark. 152, 280, 1199
v. Katzenstein, 52 Ark. 107, 1253
v. Parish, 36 Ark. 166, 90, 103
City of Logansport v. Blakemore, 17 Ind. 318, 996
v. Crockett, 64 Ind. 319, 300, 468, 477, 1425, 1427
v. Dick, 70 Ind. 65, 1590
v. Dykeman, 116 Ind. 15, 299, 889, 1038, 1201
v. Humphrey, 84 Ind. 467, 260, 565
v. Justice, 74 Ind. 378, 1620
v. La Rose, 99 Ind. 117, 1660
v. Legg, 20 Ind. 315, 291, 292, 1256
v. Pollard, 50 Ind. 151, 1224
v. Seybold, 59 Ind. 225, 395
v. Shirk, 88 Ind. 563, 675
v. Wright, 25 Ind. 512, 1180, 1208
City of Los Angeles v. Los Angeles Water Co., 124 Cal. 368, 610, 1707
v. Southern Pacific R. Co., 67 Cal. 433, 1510
v. Teed, 112 Cal. 319, 1021
City of Louisville v. Bannon, 99 Ky. 74, 1319
v. Cassady, 20 Ky. L. 1348, 1800
v. City of Louisville Rolling Mill Co., 3 Bush 416, 1776
v. Coleburne, 22 Ky. L. 64, 1772
v. Commonwealth, 1 Duv. 295, 572, 1529, 1546
v. Gosnell, 104 Ky. 201, 1292
v. Hegan, 20 Ky. L. 1532, 1774, 1776
v. Henning, 1 Bush 381, 1501, 1503
v. Hyatt, 5 B. Mon. 199, 1306
v. Kean, 18 B. Mon. 9, 1681
v. Leatherman, 99 Ky. 213, 1244, 1306
v. Louisville Water Co., 20 Ky. L. 1259, 1351
v. McGill, 21 Ky. L. 718, 1754, 1793
v. McKegney, 7 Bush 651, 1424
v. Mehler, 21 Ky. L. 62, 1308
v. Murphy, 86 Ky. 53, 663
v. O'Malley, 21 Ky. L. 873, 1753, 1754
v. Seibert, 21 Ky. L. 328, 1754
v. Selvage, 21 Ky. L. 349, 512, 725, 1296, 1310
v. Shannahan, 22 Ky. L. 163, 795
v. Western Bank, 21 Ky. L. 1075, 512
City of Louisville v. Wilson, 99 Ky. 598, 173
City of Lowell v. French, 6 Cush. 223, 1262
v. Hadley, 8 Met. 180, 1198
v. Parker, 10 Met. 309, 329
v. Simpson, 10 Allen 88, 468
v. Wheelock, 11 Cush. 391, 1254, 1424
City of Ludlow v. Mackintosh, 21 Ky. L. 924, 1775
v. Trustees, 78 Ky. 357, 1249, 1253
City of Lynchburg v. Norfolk &c. R. Co., 80 Va. 237, 1508
v. Slaughter, 75 Va. 57, 1026
City of Lynn v. City of Newburyport, 5 Allen 545, 1049, 1052
v. County Com'rs, 148 Mass. 148, 1485
City of Lyons v. Cooper, 39 Kan. 324, 1401
City of Madison v. Baker, 103 Ind. 41, 1624
v. Korbly, 32 Ind. 74, 169, 200, 207
v. Smith, 83 Ind. 502, 1201
v. Whitney, 21 Ind. 261, 1511
City of Mankato v. Arnold, 36 Minn. 62, 1072, 1410
v. Fowler, 32 Minn. 364, 1398
City of Marion v. Eppler, 5 Ohio St. 250, 1266
v. Robertson, 84 Ill. App. 113, 596
City of Marionville v. Henson, 65 Mo. App. 397, 1129, 1236, 1291
City of Marshall v. Cleveland &c. R. Co., 80 Ill. App. 531, 611, 932
v. Rainey, 78 Mo. App. 416, 751, 1236, 1279
City of Marshalltown v. Blums, 58 Iowa 184, 1537
City of Maysville v. Shultz, 3 Dana 10, 92
City of McGregor v. Cook, 16 S. W. 936, 1743
City of McKeesport v. Citizens' &c. R. Co., 2 Pa. Super. Ct. 249, 1811
v. McKeesport &c. R. Co., 2 Pa. Super. Ct. 242, 1384
v. Soles, 178 Pa. St. 363, 1244
City of McPherson v. Nichols, 48 Kan. 430, 1423
City of Memphis v. Adams, 9 Heisk. 518, 181, 663
v. Bolton, 9 Heisk. 508, 701, 702, 704
v. Brown, 20 Wall. 289, 181, 741, 1305, 1306
v. Hernando Ins. Co., 6 Baxt. 527, 1531
v. Laski, 9 Heisk. 511, 1745
v. Memphis Water Co., 5 Heisk. 495, 456
City of Michigan City v. Leeds, 24 Ind. App. 271, 724
City of Middlesboro v. Coal & Iron Bank, 22 Ky. L. 380, 1544, 1554
v. New South Brewing &c. Co., 56 S. W. 427, 1548
City of Miles City v. Kern, 12 Mont. 119, 538, 1419
City of Milwaukee v. Milwaukee Co., 95 Wis. 424, 1504
v. Milwaukee &c. Co., 7 Wis. 85, 1171
City of Mineral Wells v. Darby, 51 S. W. 351, 562
City of Mitchell v. Smith, 12 S. D. 241, 876, 1021
City of Mobile v. Craft, 94 Ala. 156, 602
v. Louisville &c. R. Co., 124 Ala. 132, 585
City of Monett v. Beatty, 79 Mo. App. 315, 528

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Morrison v. Hinkson, 87 Ill. 587, 1111, 1530, 1743
City of Mt. Carmel v. Blackburn, 53 Ill. App. 658, 1328, 1341
v. Shaw, 155 Ill. 37, 1319, 1369
City of Mt. Pleasant v. Breeze, 11 Iowa 399, 606
City of Mt. Sterling v. Holly, 22 Ky. L. 358, 1407
v. Jephson, 21 Ky. L. 1028, 1777
City of Mt. Vernon v. Holbn, 22 Ind. App. 282, 1361, 1364, 1786, 1793
v. Hovey, 52 Ind. 563, 983
City of Muscatine v. Chicago &c. R. Co., 79 Iowa 645, 1251
v. Chicago &c. R. Co., 88 Iowa 291, 1245
v. Keokuk &c. Co., 45 Iowa 185, 246
v. Steck, 7 Iowa 505, 1418, 1420
City of Napa v. Easterby, 76 Cal. 222, 480, 482, 486, 489
City of Nashville v. Smith, 86 Tenn. 213, 1546
City of Natchez v. Shields, 74 Miss. 871, 1326
City of Navasota v. Pearce, 46 Tex. 525, 9
City of Nevada v. Eddy, 123 Mo. 546, 1251
City of New Albany v. Lines, 21 Ind. App. 380, 1377
v. McCulloch, 127 Ind. 500, 889, 1324
v. Meekin, 3 Ind. 481, 1499, 1500, 1502, 1550
v. Slider, 21 Ind. App. 392, 812, 1107
City of Newark v. Funk, 15 Ohio St. 462, 1746
v. Stout, 52 N. J. L. 35, 164
City of New Bedford v. Inhabitants &c., 9 Allen 207, 1036
City of Newburyport v. Creedon, 148 Mass. 158, 1069
City of New Haven v. Fairhaven &c. R. Co., 38 Conn. 422, 1248
v. Sargent, 38 Conn. 50, 1109, 1378
City of New Kiowa v. Craven, 46 Kan. 114, 806
City of New London v. Brainard, 22 Conn. 552, 651, 668, 1730
City of New Orleans v. Abbagnats, 62 Fed. 240, 800
v. Boudra, 14 La. An. 303, 85, 538
v. Brooks, 36 La. An. 641, 274
v. Carondelet &c. Co., 36 La. An. 396, 1545
v. Cazelar, 27 La. An. 156, 1513, 1516
v. Collins, 52 La. An. 973, 106, 1383
v. Commercial Bank, 10 La. An. 735, 1510
v. Costello, 14 La. An. 37, 1413
v. Danneman, 51 La. An. 1093, 1391
v. Elliott, 10 La. An. 59, 1520
v. Fisher, 91 Fed. 574, 1755
v. Fourchy, 30 La. An. 910, 1503
v. Graffina, 52 La. An. 1082, 1386
v. Home Mut. Ins. Co., 23 La. An. 61, 1530, 1744
v. Hoyle, 23 La. An. 740, 104
v. Kaufman, 29 La. An. 283, 1520
v. Kerr, 50 La. An. 413, 786
v. Kientz, 52 La. An. 950, 580
v. Louisiana &c. Co., 31 La. An. 826, 1502
v. Lozes, 51 La. An. 1172, 1406
v. Mechanics' &c. Bank, 15 La. An. 107, 1510
v. Michoud, 10 La. An. 763, 393
v. Morris, 3 Woods 103, 581, 1529
City of New Orleans v. New Orleans &c. Co., 32 La. An. 105, 1513, 1546
v. People's Bank, 32 La. An. 82, 1503
v. St. Louis Church, 11 La. An. 244, 301
v. Ship Windemere, 12 La. An. 84, 1100
v. Southern Bank, 11 La. An. 41, 1510
v. Southern Bank, 15 La. An. 89, 106
v. Stafford, 27 La. An. 417, 580, 1402, 1403
v. Staiger, 11 La. An. 68, 1520
v. Steinhardt, 52 La. An. 1043, 1142, 1713, 1809
v. Turpin, 13 La. An. 56, 1508
v. Warden &c., 11 La. An. 244, 987, 1086
v. Warner, 175 U. S. 120, 952
v. Wire, 20 La. An. 500, 1262
City of Newport v. Commonwealth, 21 Ky. L. 42, 1815
v. Newport &c. Co., 84 Ky. 166, 636, 1466
v. Newport &c. Co., 89 Ky. 454, 571, 1466, 1467
v. Newport &c. Co., 90 Ky. 193, 622
v. Phillips, 19 Ky. L. 352, 716, 717
v. South Covington &c. R. Co., 89 Ky. 29, 1509
City of Newton v. Belger, 143 Mass. 598, 508, 605, 621
v. Bergbower, 63 Ill. App. 201, 518
City of New Whatcom v. Bellington Bay Improv. Co., 16 Wash. 131, 1274
City of New York, In re, 61 N. Y. S. 431, 1311
v. Brady, 30 N. Y. S. 1121, 1367
v. Brown, 57 N. Y. S. 742, 1337, 1338
v. Dimick, 2 N. Y. S. 46, 1589
City of Nokomis v. Salter, 61 Ill. App. 150, 1330
City of Norfolk v. Young, 97 Va. 728, 1166
City of North Platte v. North Platte Water Works Co., 56 Neb. 403, 290, 730
City of North Vernon v. Voegler, 103 Ind. 314, 1179
City of Oakland v. Carpentier, 13 Cal. 540, 281, 292, 547
City of Oklahoma City v. Myers, 4 Okla. 686, 1339
v. Welsh, 3 Okla. 288, 1330, 1335
City of Olney v. Harvey, 50 Ill. 453, 92, 440, 1519, 1530
v. Wharf, 115 Ill. 519, 588, 678
City of Olympia v. Mann, 1 Wash. 389, 594, 1392
City of Omaha v. Bowman, 52 Neb. 293, 1338
v. City of South Omaha, 31 Neb. 378, 62, 391
v. Croft, 60 Neb. 57, 824, 825
v. Flood, 57 Neb. 124, 1107, 1772, 1774
v. Harmon, 58 Neb. 339, 513
v. Kountze, 25 Neb. 60, 1263
v. Kramer, 25 Neb. 489, 1211, 1222
v. Megeath, 46 Neb. 502, 1700
v. Olmstead, 5 Neb. 446, 1418
v. Richards, 49 Neb. 244, 794, 1331, 1338
v. Williams, 52 Neb. 40, 1778
City of Opdike v. Daniel, 59 Ala. 211, 983
City of Ord v. Nash, 50 Neb. 335, 1337, 1374
City of Osage City v. Larkins, 40 Kan. 206, 1608

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Osborne v. Hamilton, 29 Kan. 1, 1621
City of Oshkosh v. Milwaukee &c. R. Co., 74 Wis. 534, 1667
v. Schwartz, 55 Wis. 483, 536, 542
City of Oswego v. Canal Co., 6 N. Y. 257, 1374, 1559, 1563, 1567
v. Collins, 38 Hun 171, 1401
City of Ottawa v. Black, 10 Kan. App. 339, 931, 1329, 1367, 1796
v. McCreery, 10 Kan. App. 443, 1787
v. People, 48 Ill. 233, 1683
v. Spencer, 40 Ill. 121, 1168, 1268, 1514
City of Ottumwa v. Chinn, 75 Iowa 405, 1126
v. Schaub, 52 Iowa 515, 540, 1422, 1424
v. Zekind, 95 Iowa 622, 502, 503
City of Ouray v. Corson, 14 Colo. App. 345, 600, 1763
City of Owensboro v. Hickman, 90 Ky. 629, 371
v. Sparks, 18 Ky. L. 269, 526, 527, 599
City of Paducah v. Cully, 9 Bush 323, 322
City of Palestine v. Hassell, 15 Tex. Civ. App. 519, 1336, 1337
v. West, 37 S. W. 783, 201
City of Parkersburg v. Tavener, 42 W. Va. 486, 1272, 1786
City of Paterson v. Society of Manufacturers, 24 N. J. L. 385, 1246
City of Pawtucket v. Bray, 20 R. I. 17, 1340
City of Paxton v. Frew, 52 Ill. App. 393, 1335
City of Pekin v. Brereton, 67 Ill. 477, 1385
v. McMahon, 154 Ill. 141, 794, 816
v. Reynolds, 31 Ill. 529, 931, 1016
v. Smelzel, 21 Ill. 464, 1400
City of Pensacola v. Sullivan, 23 Fla. 1, 1541
City of Peoria v. Calhoun, 29 Ill. 317, 500
v. Crawl, 28 Ill. App. 154, 1180
v. Gerber, 68 Ill. App. 255, 1332
v. Gugenheim, 61 Ill. App. 374, 492, 502
v. Johnston, 56 Ill. 45, 401
v. Kidder, 26 Ill. 351, 1246
City of Philadelphia v. Ball, 147 Pa. St. 243, 1256
v. Bowman, 175 Pa. St. 91, 522
v. Dibeler, 147 Pa. St. 261, 1156
v. Dickson, 38 Pa. St. 247, 705
v. Duncan, 4 Phila. 145, 530
v. Dyer, 41 Pa. St. 463, 705
v. Evans, 139 Pa. St. 483, 1158
v. Flanigan, 47 Pa. St. 21, 638, 647
v. Gavagnin, 62 Fed. 617, 795, 1333
v. Germantown Pass. R. Co., 10 Phila. 165, 687
v. Gilmartin, 71 Pa. St. 146, 1112
v. Given, 60 Pa. St. 136, 198, 1445
v. Gorges, 180 Pa. St. 296, 1292
v. Greble, 38 Pa. St. 339, 458, 1544
v. Madden, 8 Pa. Dist. R. 532, 547
v. Miller, 49 Pa. St. 440, 1238
v. Nock, 12 Pa. Super. Ct. 44, 1307
v. Philadelphia &c. R. Co., 58 Pa. St. 253, 629, 1106
v. Philadelphia &c. R. Co., 177 Pa. St. 292, 1252
v. Presbyterian Hospital, 143 Pa. St. 367, 1247
v. Rink (Pa.), 2 Atl. 505, 1445
v. River Front R. Co., 137 Pa. St. 334, 1350
v. Rule, 93 Pa. St. 15, 1271
City of Philadelphia v. Smith, 23 W. N. C. 242, 1614, 1616
v. Smith, 16 Atl. 493, 1637
v. Tryon, 35 Pa. St. 401, 593, 1234
v. Union Burial Grounds, 178 Pa. St. 533, 1246, 1294
v. Wistar, 35 Pa. St. 427, 593
v. Wright, 100 Pa. St. 235, 1220
v. Yewdall, 190 Pa. St. 412, 1272
City of Piqua v. Zimmerlin, 35 Ohio St. 507, 519
City of Pittsburg, Appeal of, 118 Pa. 458, 1508
v. Broderson, 10 Kan. App. 430, 1360, 1797
v. Epping Carpenter Co., 194 Pa. St. 318, 1707
v. Grier, 22 Pa. St. 54, 1112, 1113
v. Reynolds, 48 Kan. 360, 485
City of Platteville v. Hooper, 63 Wis. 385, 312, 315
City of Plattsburg v. Riley, 42 Mo. App. 18, 395
City of Plattsmouth v. Boeck, 32 Neb. 297, 1209, 1211
City of Pleasanton v. Rhine, 8 Kan. App. 452, 1333
City of Plymouth v. Milner, 117 Ind. 324, 1634
v. Schultheis, 135 Ind. 701, 508
City of Pontiac v. Carter, 32 Mich. 164, 225, 801, 1322
v. Talbot Pav. Co., 94 Fed. 65, 722, 741
City of Port Huron v. Chadwick, 52 Mich. 320, 1214
City of Portland v. City of Bangor, 65 Maine 120, 1415
v. Portland Water Co., 67 Maine 135, 1502, 1512
City of Poughkeepsie v. King, 57 N. Y. S. 116, 527
v. Quintard, 136 N. Y. 275, 875
v. Wiltsie, 36 Hun 270, 179
City of Providence v. Miller, 11 R. I. 272, 216, 262
v. Union R. Co., 12 R. I. 473, 523, 524
City of Pueblo v. Robinson, 12 Colo. 593, 1205, 1267
City of Putnam v. Langley, 133 Mass. 204, 1666
City of Quincy v. Ballance, 30 Ill. 185, 535
v. Bull, 106 Ill. 337, 519, 522, 1812
v. Chicago &c. R. Co., 92 Ill. 21, 464
v. Jones, 76 Ill. 231, 1355, 1776
v. O'Brien, 24 Ill. App. 591, 607
City of Raleigh v. Peace, 110 N. C. 32, 570, 1230, 1255, 1262, 1267, 1269
City of Reading v. Keppleman, 61 Pa. St. 233, 90, 103
v. Savage, 120 Pa. St. 198, 43
City of Rensselaer, 64 N. Y. S. 704, 1652
City of Richmond v. Crenshaw, 76 Va. 936, 1717, 1728
v. Daniel, 14 Gratt. 385, 1501, 1503
v. Dudley, 129 Ind. 112, 503, 685
v. Long, 17 Gratt. 375, 806, 1075, 1096
v. McGirr, 78 Ind. 192, 837
v. Mulholland, 116 Ind. 173, 1635
v. Richmond &c. R. Co., 21 Gratt. 604, 1247, 1513, 1533, 1545, 1548
v. Scott, 48 Ind. 568, 1520
City of Roanoke v. Shull, 97 Va. 419, 1793, 1798
City of Rochester v. Bell Tel. Co., 64 N. Y. S. 804, 1390
v. Campbell, 123 N. Y. 405, 1345, 1587, 1598

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

City of Rochester v. Close, 35 Hun 208, 1398
v. Erickson, 46 Barb. 92, 1125
v. Montgomery, 72 N. Y. 65, 1344, 1598
v. Town of Rush, 80 N. Y. 302, 572, 1536, 1546
v. Upman, 19 Minn. 108, 537, 1507
v. West, 53 N. Y. S. 1101, 1386
City of Rock Falls v. Wells, 59 Ill. App. 155, 1316
City of Rockford v. Rannie, 77 Ill. App. 665, 1343
City of Rock Island v. Vanlandschoot, 78 Ill. 485, 1641
City of Rockville v. Merchant, 60 Mo. App. 365, 520
City of Roodhouse v. Christian, 53 Ill. App. 107, 1341
v. Jennings, 29 Ill. App. 50, 611
v. Johnson, 57 Ill. App. 73, 173
City of Rosedale v. Golding, 55 Kan. 167, 1315
City of Rushville v. Rushville Nat. Gas Co., 132 Ind. 575, 553, 569, 573, 574
City of Sacramento v. Crocker, 16 Cal. 119, 1508
v. Fowle, 21 Wall. 119, 1737
v. Kirk, 7 Cal. 419, 996
City of Saginaw v. Saginaw Circuit Judge, 106 Mich. 32, 604
v. Swift Electric L. Co., 113 Mich. 660, 504
City of St. Charles v. Elsner, 155 Mo. 671, 1388
v. Hackman, 133 Mo. 634, 1752
City of St. Joseph v. Anthony, 30 Mo. 537, 1131, 1533
v. Farrell, 106 Mo. 437, 1270
v. Hamilton, 43 Mo. 282, 699
v. Hannibal &c. R. Co., 39 Mo. 476, 1513
v. Levin, 128 Mo. 588, 604
v. O'Donoghue, 31 Mo. 345, 1253
v. Owen, 110 Mo. 445, 1175, 1206
v. Vesper, 59 Mo. App. 459, 499
City of St. Louis v. Alexander, 23 Mo. 483, 485, 1010
v. Allen, 13 Mo. 400, 104, 384, 1515, 1517
v. Allen, 53 Mo. 44, 1206
v. Arnot, 94 Mo. 275, 1462
v. Bell Tel. Co., 96 Mo. 623, 615
v. Bentz, 11 Mo. 61, 495, 496, 1085
v. Boatman's Ins. &c. Co., 47 Mo. 150, 1507
v. Boffinger, 19 Mo. 13, 466, 1099
v. Bowler, 94 Mo. 630, 1389
v. Brown, 155 Mo. 545, 512, 1244, 1274
v. Bucher, 7 Mo. App. 169, 1507
v. Cafferata, 24 Mo. 94, 104, 495, 496, 601, 1085
v. Clemens, 36 Mo. 467, 1499
v. Clemens, 42 Mo. 69, 1192
v. Connecticut L. Ins. Co., 107 Mo. 92, 1588
v. Davidson, 102 Mo. 149, 235, 239, 255, 649
v. Dorr, 136 Mo. 370, 1391
v. Excelsior Brewing Co., 96 Mo. 677, 1252
v. Fitz, 53 Mo. 582, 538
v. Foster, 52 Mo. 513, 299, 477, 485, 540, 1422
v. Goebel, 32 Mo. 295, 516
v. Green, 7 Mo. App. 468, 1508, 1521
v. Grone, 46 Mo. 574, 1396
v. Gurno, 12 Mo. 414, 1602
v. Heitzeberg Packing &c. Co., 141 Mo. 375, 1394
v. Herthel, 88 Mo. 128, 517, 615
City of St. Louis v. Knox, 74 Mo. 79, 538
v. Knox, 6 Mo. App. 247, 502
v. Laclede Gas Light Co., 155 Mo. 1, 746
v. Laughlin, 49 Mo. 559, 615, 1508, 1509
v. McCoy, 18 Mo. 238, 1099
v. Meyrose Lamp Mfg. Co., 139 Mo. 560, 1390
v. Oeters, 36 Mo. 456, 1234, 1253
v. Ranken, 96 Mo. 497, 1254
v. Roche, 128 Mo. 541, 541, 612
v. Russell, 9 Mo. 507, 94, 104, 388, 1517
v. Russell, 116 Mo. 248, 1393
v. St. Louis R. Co., 89 Mo. 44, 539
v. St. Louis R. Co., 14 Mo. App. 221, 519
v. Schoenbusch, 95 Mo. 618, 496, 601, 607
v. Spiegel, 75 Mo. 145, 1507
v. Stearn, 3 Mo. App. 48, 1093
v. Sternberg, 4 Mo. App. 453, 1508
v. Sternburg, 69 Mo. 289, 1520
v. Vert, 84 Mo. 204, 481, 493, 536, 607
v. Weber, 44 Mo. 547, 100, 502, 1084, 1403, 1406
v. Weitzel, 130 Mo. 600, 602, 605
v. Western U. Tel. Co., 63 Fed. 68, 604, 729
v. Wiggin Ferry Co., 40 Mo. 580, 1499, 1502
v. Withaus, 90 Mo. 646, 274, 471
City of St. Paul v. Chicago &c. R. Co., 63 Minn. 330, 566, 1350
v. Colter, 12 Minn. 41, 500, 501, 1148
v. Gilfillan, 36 Minn. 298, 621, 1120
v. Laidler, 2 Minn. 190, 575, 1403
v. Seitz, 3 Minn. 297, 1590
v. Stoltz, 33 Minn. 233, 1389
v. Traeger, 25 Minn. 248, 1403
City of Salem v. Eastern R. Co., 98 Mass. 431, 1080, 1090, 1110, 1116, 1123, 1762
v. Maynes, 123 Mass. 272, 1121, 1122
City of Salina v. Trosper, 27 Kan. 544, 1641
City of San Antonio v. Berry, 92 Tex. 319, 1549, 1786
v. Jones, 28 Tex. 19, 983
v. Lane, 32 Tex. 405, 983, 1018
v. Mackey, 14 Tex. Civ. App. 210, 825
v. Mackey, 22 Tex. Civ. App. 145, 793
v. Micklejohn, 89 Tex. 79, 463
v. Mullaly, 11 Tex. Civ. App. 596, 1211
v. Peters, 40 S. W. 827, 1304
v. San Antonio St. R. Co., 15 Tex. Civ. App. 1, 1811
v. Smith, 94 Tex. 266, 1798
v. Walker, 56 S. W. 952, 1304
v. White, 57 S. W. 858, 804
City of San Diego v. Granniss, 77 Cal. 511, 404
City of Sandwich v. Dolan, 133 Ill. 177, 1634
v. Dolan, 141 Ill. 430, 1631
City of San Francisco v. Burr, 108 Cal. 460, 1319
v. Canavan, 42 Cal. 541, 90, 103, 629, 1537
v. Hazen, 5 Cal. 169, 292
v. Itsell, 80 Cal. 57, 630
City of San Jose v. Welch, 65 Cal. 358, 328
City of San Luis Obispo v. Fitzgerald, 126 Cal. 279, 470

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Santa Barbara v. Sherman, 61 Cal. 57, 535
City of Santa Cruz v. Santa Cruz R. Co., 56 Cal. 143, 527
v. Waite, 98 Fed. 387, 1021, 1031
City of Santa Rosa v. Coulter, 58 Cal. 537, 1515
City of Savannah v. Atlantic &c. R. Co., 3 Woods 432, 1533
v. Hancock, 91 Mo. 54, 685, 687, 1568
v. Kelly, 108 U. S. 184, 982
City of Scranton v. Barnes, 147 Pa. St. 461, 1256
v. Catterson, 94 Pa. St. 202, 1609, 1621
v. Gore, 124 Pa. St. 595, 1637
v. Hill, 102 Pa. St. 378, 1637
v. Hyde Park Gas Co., 102 Pa. St. 382, 959
v. Pennsylvania Coal Co., 105 Pa. St. 445, 1199
City of Seattle v. Baxter, 20 Wash. 714, 1284
v. Pearson, 15 Wash. 575, 520
v. Smyth, 22 Wash. 327, 492
v. Yesler, 1 Wash. Ter. 571, 47, 1262
City of Selma v. Mullen, 46 Ala. 411, 260
City of Seward v. Conroy, 33 Neb. 430, 399
City of Seymour v. Cummins, 119 Ind. 148, 1179
v. Jeffersonville &c. R. Co., 126 Ind. 466, 678
City of Shawneetown v. Baker, 85 Ill. 563, 257, 662
v. Mason, 82 Ill. 337, 704
City of Sherman v. Nairey, 77 Tex. 291, 1581
City of Shreveport v. Gregg, 28 La. An. 836, 1498
v. Levy, 26 La. An. 671, 493
v. Prescott, 51 La. An. 1895, 1131, 1132, 1248
v. Robinson, 51 La. An. 1314, 503
v. Roos, 35 La. An. 1010, 526
City of Sioux City v. Weare, 59 Iowa 95, 876
City of Sioux Falls v. Kirby, 6 S. D. 62, 596
City of Solomon v. Hughes, 24 Kan. 211, 540, 1421
City of Somerset v. Smith, 20 Ky. L. 1488, 290, 729
City of Somerville v. City of Boston, 120 Mass. 574, 1045
City of South Bend v. Paxon, 67 Ind. 228, 1625
City of South Omaha v. Cunningham, 31 Neb. 316, 1210
v. Powell, 50 Neb. 798, 1374
City of South Pasadena v. Los Angeles &c. R. Co., 109 Cal. 315, 513
City of South St. Paul v. Lamprecht, 88 Fed. 449, 871, 986, 1012, 1029
City of Spokane Falls v. Brown, 3 Wash. 84, 1254
City of Springfield v. Baker, 56 Mo. App. 637, 1240
v. Burns, 51 Ill. App. 595, 1341
v. Davis, 80 Mo. App. 574, 1550
v. Doyle, 76 Ill. 202, 1614
v. Edwards, 84 Ill. 385, 219, 881, 895, 897, 917, 1699, 1730
v. Green, 120 Ill. 269, 512, 1211, 1268, 1303
v. Harris, 107 Mass. 532, 1159
v. Le Claire, 49 Ill. 476, 787, 1620
v. Mathus, 124 Ill. 88, 1146, 1259
v. Rosenmeyer, 52 Ill. App. 301, 1328
v. Sale, 127 Ill. 359, 1234, 1259
City of Springfield v. Schmook, 68 Mo. 394, 704
v. Tomlinson, 79 Ill. App. 399, 1364
v. Weaver, 137 Mo. 650, 1144, 1146, 1157
City of Spring Valley v. Gavin, 182 Ill. 232, 1794, 1803, 1805
City of Sterling v. Galt, 117 Ill. 11, 512, 1142, 1143, 1259, 1268, 1272, 1273, 1300, 1303
v. Merrill, 124 Ill. 522, 1334, 1614, 1629
City of Stockton v. Creanor, 45 Cal. 643, 282
v. Western &c. Ins. Co., 73 Cal. 621, 114
City of Streator v. Chrisman, 182 Ill. 215, 1334
v. Chrisman, 82 Ill. App. 24, 1330
v. Hamilton, 61 Ill. App. 509, 1330
City of Sumner v. Scaggs, 52 Ill. App. 551, 1326
City of Superior v. Norton, 63 Fed. 357, 729
City of Syracuse v. Reed, 46 Kan. 520, 903
City of Tampa v. Mugge, 40 Fla. 326, 1543
v. Salomonson, 35 Fla. 446, 520, 551
City of Taunton v. Inhabitants &c., 153 Mass. 192, 1047, 1057
v. Taylor, 116 Mass. 254, 468, 552, 1094, 1125, 1126
City of Terre Haute v. Beach, 96 Ind. 143, 1572
v. Evansville &c. R. Co., 149 Ind. 147, 1782
v. Hudnut, 112 Ind. 542, 820, 1207
v. Mack, 139 Ind. 99, 1702
v. Turner, 36 Ind. 522, 680
City of Terrell v. Dessaint, 71 Tex. 770, 892
City of Texarkana v. Leach, 66 Ark. 40, 1317
City of Toledo v. Board &c., 48 Ohio St. 43, 1247
City of Topeka v. Cowee, 48 Kan. 345, 1561, 1566
v. Gillett, 32 Kan. 431, 113, 119, 401
v. Noble, 9 Kan. App. 171, 1794, 1801
v. Raynor, 60 Kan. 860, 490, 1394
v. Sells, 48 Kan. 512, 1224
City of Troy v. Atchison &c. R. Co., 11 Kan. 519, 540
v. Winters, 2 Hun 63, 594, 1392
City of Tulare v. Hevren, 126 Cal. 226, 1787
City of Uvalde v. Spier, 91 Fed. 594, 1012, 1029
City of Valparaiso v. Gardner, 97 Ind. 1, 11, 568, 632, 647, 651, 848, 877, 880, 889, 897, 1038, 1465
v. Hagen, 153 Ind. 337, 1708
City of Vicksburg v. Butler, 56 Miss. 72, 1552
v. Hennessey, 54 Miss. 391, 1586, 1633
v. Herman, 72 Miss. 211, 1219
City of Vincennes v. Callender, 86 Ind. 484, 1038
v. Citizens' Gas Light Co., 132 Ind. 114, 568, 569
City of Virginia v. Hall, 96 Ill. 278, 1262
v. Plummer, 65 Ill. App. 419, 1344
City of Wabash v. Carver, 129 Ind. 552, 1578, 1579
City of Waco v. Chamberlain, 92 Tex. 207, 748, 1153
v. Prather, 90 Tex. 80, 1144
v. Prather, 35 S. W. 958, 1144

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

City of Wahoo v. Dickinson, 23 Neb. 426, 385
v. Reeder, 27 Neb. 770, 13
City of Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 740, 876, 880, 881
City of Waltham v. City of Newburyport, 150 Mass. 569, 1045
City of Warsaw v. Dunlap, 112 Ind. 576, 1615
City of Waterloo v. Union Mill Co., 72 Iowa 437, 1559
City of Waterton v. Robinson, 69 Wis. 230, 1737
City of Water Valley v. Davis, 73 Miss. 521, 1752
City of Waxahachie v. Brown, 67 Tex. 519, 628, 883
City of Waycross v. Youmans, 85 Ga. 708, 199
City of Wellston v. Morgan, 59 Ohio St. 147, 734
City of Westport v. Kansas City, 103 Mo. 141, 116, 388
v. Mastin, 62 Mo. App. 647, 463, 550, 1295
City of Wheeling v. Mayor &c., 1 Hughes 90, 579
City of Whitewright v. Taylor, 23 Tex. Civ. App. 486, 1376
City of Wilkes Barre v. Meyers, 113 Pa. St. 395, 1446
City of Williamsport v. Beck, 128 Pa. St. 147, 1195
v. Commonwealth, 89 Pa. St. 48, 977
City of Willow Springs v. Withaupt, 61 Mo. App. 275, 515
City of Wilmington v. Macks, 86 N. C. 88, 1507
v. Yopp, 71 N. C. 76, 1230
City of Winchester v. Redmond, 93 Va. 711, 638, 741
City of Winfield v. Peeden, 8 Kan. App. 671, 180, 790
City of Winona v. Burke, 23 Minn. 254, 537
v. School Dist., 40 Minn. 13, 1473, 1474
City of Worcester v. Inhabitants &c., 4 Allen 574, 1047
v. Keith, 5 Allen 17, 697
City of Wyandotte v. Wood, 5 Kan. 603, 54, 55
v. Zeitz, 21 Kan. 649, 646
City of Yonkers v. Yonkers R. Co., 64 N. Y. S. 955, 503, 1407
City of Ysleta v. Babbitt, 8 Tex. Civ. App. 432, 788, 789, 816
City of Zanesville v. Richard, 5 Ohio St. 589, 1513, 1521, 1534
City R. Co. v. Citizens' St. R. Co., 166 U. S. 557, 566, 1351, 1756, 1808, 1813
City &c. R. Co. v. Mayor &c., 77 Ga. 731, 594, 1358
City Sav. Bank v. Huebner, 84 Mich. 391, 910
City St. Imp. Co. v. Babcock, 123 Cal. 205, 1131
Civil Service Com'rs v. Kenyon, 86 Ill. App. 547, 1686
Claflin v. City of Chicago, 178 Ill. 549, 1153
v. Inhabitants &c., 4 Gray 502, 668
v. McDonough, 33 Mo. 412, 1263
Claiborne Co. v. Brooks, 111 U. S. 400, 562, 625, 637, 972, 974, 984
Clapp v. Camp, 122 Mass. 481, 1779
v. City of Hartford, 35 Conn. 66, 1239, 1270, 1271
v. Davis, 25 Iowa 315, 1745
Clapper v. Town of Waterford, 131 N. Y. 382, 778
Claridge v. Evelyn, 5 B. & Ald. 81, 378
Clarissy v. Metropolitan Fire Dept., 7 Abb. Pr. 352, 1744
Clark v. Barnard, 108 U. S. 436, 18
v. Board &c., 27 Ill. 305, 973
v. Board &c., 24 Iowa 266, 1494
v. Board &c., 126 Mass. 282, 378
v. Board &c., 9 Neb. 516, 653
v. Board &c., 107 N. Y. 553, 853
v. City of Austin, 38 Minn. 487, 828, 1590
v. City of Columbus, 23 Wkly. L. Bul. 289, 837
v. City of Davenport, 14 Iowa 494, 106, 846, 1232, 1535
v. City of Des Moines, 19 Iowa 199, 217, 234, 250, 252, 253, 638, 941, 952, 960, 977, 1232, 1368, 1459
v. City of Dunkirk, 75 N. Y. 612, 1197
v. City of Janesville, 10 Wis. 119, 484, 837, 973
v. City of Portsmouth, 68 N. H. 263, 180
v. City of Richmond, 83 Va. 355, 795, 1595
v. City of Rochester, 24 Barb. 446, 763, 983
v. City of South Bend, 85 Ind. 276, 575, 1121, 1391
v. City of Utica, 18 Barb. 451, 698
v. City of Worcester, 167 Mass. 81, 1792
v. Commonwealth, 29 Pa. St. 129, 66, 69, 70, 197
v. Fry, 8 Ohio St. 358, 745
v. Hannibal &c. R. Co., 36 Mo. 202, 1108
v. Holdridge, 58 Barb. 61, 220
v. Inhabitants &c., 63 Maine 393, 1613
v. Inhabitants &c., 128 Mass. 567, 803, 807
v. Jeffersonville &c. R. Co., 44 Ind. 248, 656
v. Le Crete, 9 B. & C. 52, 100, 500
v. Lincoln Co., 1 Wash. 518, 9
v. Manchester, 62 N. H. 577, 795, 803, 804, 810, 815, 816, 827
v. Mayor &c., 12 Wheat. 40, 261, 282
v. Mayor &c., 13 Barb. 32, 1093
v. McKenzie, 7 Bush 523, 381
v. Miller, 54 N. Y. 528, 222
v. Mobile School Com'rs, 36 Ala. 621, 1745
v. Montague, 1 Gray 446, 1740
v. Peckham, 10 R. I. 35, 1112
v. People, 146 Ill. 348, 1278
v. Phelps, 4 Cow. 190, 335, 1570
v. Polk Co., 19 Iowa 248, 252, 941, 952, 959
v. Robinson, 88 Ill. 498, 377
v. School Directors, 78 Ill. 474, 864
v. School District, 3 R. I. 199, 973, 977
v. Sheldon, 106 N. Y. 104, 925, 1678
v. State, 109 Ind. 388, 1490
v. State, 142 N. Y. 101, 175
v. Thompson, 37 Iowa 536, 12
v. Village of Dunkirk, 75 N. Y. 612, 1288
v. Village of Dunkirk, 12 Hun 181, 1717
v. Village of North Muskegon, 88 Mich. 308, 1738
v. Wardell, 55 Maine 61, 347, 348
v. Worcester, 125 Mass. 226, 675
Clark Co. v. Hine, 49 Ark. 145, 1052
Clarke v. City of Chicago, 185 Ill. 354, 1153, 1277

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Clarke v. City of Rochester, 5 Abb. Pr. 107, 447
v. Dutcher, 9 Cow. 674, 245, 248
v. Inhabitants &c., 81 Mo. 503, 576
v. Locke, 9 N. Y. S. 918, 1541
v. Lyon Co., 8 Nev. 181, 181, 663, 714, 1736
v. Manchester, 56 N. H. 502, 699
v. May, 2 Gray 410, 335
v. Rochester, 24 Barb. 446, 11
v. Rogers, 81 Ky. 43, 58, 61
Clarksburg Electric Light Co. v. City of Clarksburg, 47 W. Va. 739, 1811
Clason v. City of Milwaukee, 30 Wis. 316, 499, 502, 506, 1406
Classen v. Shaw, 5 Watts 468, 311
Clay v. Nichols Co., 4 Bush 154, 982
v. Wright, 44 Vt. 538, 871
Claybrook v. Board &c., 117 N. C. 456, 993
v. City of Owensboro, 23 Fed. 634, 1494
Clayburgh v. City of Chicago, 25 Ill. 535, 1224
Clay Co. v. McAleer, 115 U. S. 616, 1525, 1662
v. Simonsen, 1 Dak. 403, 319, 904, 908
v. Society &c., 104 U. S. 579, 998, 1006
Clayton v. Harris, 7 Nev. 64, 369
v. McWilliams, 49 Miss. 311, 960
Clearfield v. Ind. School Dist., 79 Pa. St. 419, 1485
Clear Lake &c. v. Lake Co., 45 Cal. 90, 1394
Clearwater v. Meredith, 1 Wall. 25, 5
Cleary v. Eddy Co., 2 N. Dak. 397, 1654
Cleburne Water &c. Co. v. City of Cleburne, 13 Tex. Civ. App. 141, 1752
Clegg v. School Dist., 8 Neb. 178, 56
Cleghorn v. Postelthwaite, 43 Ill. 428, 1720
Cleland v. Porter, 74 Ill. 76, 372
Clemence v. City of Auburn, 66 N. Y. 334, 812, 1584, 1587, 1603
Clemens v. Mayor &c., 16 Md. 208, 1262
Clement v. Burns, 43 N. H. 609, 696, 1572
v. City of Philadelphia, 137 Pa. St. 328, 1192
v. Everest, 29 Mich. 19, 66, 69
Clementine v. State, 14 Mo. 112, 1105
Clements v. Lee, 114 Ind. 397, 1150, 1190
v. Village of West Troy, 10 How. Pr. 199, 1559
Clerk v. Tucket, 3 Lev. 281, 531, 532
Cleveland v. Amy, 88 Mich. 374, 1486, 1491
v. City Council &c., 54 S. C. 83, 986, 999, 1033, 1709
v. City of Bangor, 87 Maine 259, 1333
v. Grand Trunk R. Co., 42 Vt. 449, 1109
v. Heisley, 41 Ohio St. 670, 1518
v. King, 132 U. S. 295, 1591, 1594, 1609
v. State Bank, 16 Ohio St. 236, 210
v. Steward, 3 Ga. 283, 6
v. Tripp, 13 R. I. 50, 1239, 1242, 1268
Cleveland Cotton Mills v. Commissioners &c., 108 N. C. 678, 835
Cleveland &c. R. Co. v. City of Cleveland, 94 Fed. 385, 1707
v. Dunn, 63 Ill. App. 531, 66
v. O'Brien, 24 Ind. App. 547, 1260
v. Wynant, 114 Ind. 525, 1613, 1614
Clevenger v. Town of Rushville, 90 Ind. 258, 537
Clews v. Lee Co., 2 Woods 474, 1528
Click v. Lamar Co., 79 Tex. 121, 1568
Clifford v. Commissioners, 59 Maine 262, 697
Clifton v. Cook, 7 Ala. 114, 152
v. Wynne, 80 N. C. 145, 1528
Clingman v. People, 183 Ill. 339, 1308
Clinton v. Cedar Rapids &c. R. Co., 24 Iowa 455, 90
v. City of Portland, 26 Or. 410, 1141, 1260
v. Englebrecht, 13 Wall. 434, 47
Clodfelter v. State, 86 N. C. 51, 771, 773
Cloherty, In re, 2 Wash. 137, 1410
Close v. Glenwood Cemetery, 107 U. S. 466, 104
Cloud v. Town of Norwich, 57 Vt. 448, 212
Clough v. Hart, 8 Kan. 487, 181, 664
v. Holden, 115 Mo. 336, 586
Cloughessey v. City of Waterbury, 51 Conn. 405, 1624
Cluggish v. Koons, 15 Ind. App. 599, 1286
Coal Float v. City of Jeffersonville, 112 Ind. 15, 500
Coan v. City of Marlborough, 164 Mass. 206, 789
Coast Co. v. Mayor &c., 56 N. J. Eq. 615, 70, 1731
Coast Line R. Co. v. Mayor &c., 30 Fed. 646, 510, 1183
Coates v. Campbell, 37 Minn. 498, 980
v. Mayor &c., 7 Cow. 585, 528, 611, 1079, 1086, 1105, 1114, 1119
Coatesville Gas Co. v. Chester Co., 97 Pa. St. 476, 1512
Cobb v. City of Boston, 112 Mass. 181, 701, 702
v. City of Portland, 55 Maine 381, 799
v. Kingman, 15 Mass. 197, 90, 103
v. Lucas, 15 Pick. 1, 707
v. Ramsdell, 14 N. Y. S. 93, 1065
v. School Dist., 63 Vt. 647, 853, 1491
Coburn v. Bossert, 13 Ind. App. 359, 1705
v. Ellenwood, 4 N. H. 99, 50
Cochran v. McCleary, 22 Iowa 75, 189, 286, 288, 296
v. Village of Park Ridge, 138 Ill. 295, 1146, 1174
Cochrane v. Mayor &c., 81 Md. 54, 599, 812
Cocke v. Halsey, 16 Pet. 71, 70, 195, 197
Cocker v. Du Coteau Landing Co., 16 Rap. Jud. Que. S. C. 72, 550
Cockerell v. Cholomeley, 1 Russ. & Myl. 418, 429, 1014
Codman v. Winslow, 10 Mass. 146, 348
Codner v. Bradford, 10 Wis. 443, 1596
Coe v. Bearup, 14 Week. Dig. 246, 1564
v. Caledonia &c. R. Co., 27 Minn. 197, 990
v. Meriden, 45 Conn. 155, 115
v. Schultz, 47 Barb. 64, 1107
v. Smith, 24 Wend. 341, 1050
Coffey v. Edmonds, 58 Cal. 521, 158
Coffeyville &c. Co. v. Citizens' Gas &c. Co., 55 Kan. 173, 1347
Coffin v. City of Portland, 43 Fed. 411, 299
v. Inhabitants &c., 162 Mass. 192, 1317
v. Nantucket, 5 Cush. 269, 281
v. Richards, 59 Pac. 562, 986
v. State, 7 Ind. 157, 183
Coggeshall v. City of Des Moines, 78 Iowa 235, 837, 1188
v. Pelton, 7 Johns. Ch. 292, 664

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Coggswell v. Inhabitants &c., 4 Cush. 307, 1597
Cohen v. City of Alameda, 124 Cal. 504, 1153, 1506
v. Mayor &c., 113 N. Y. 532, 1110, 1111, 1112, 1609, 1610
v. St. Louis &c. R. Co., 34 Kan. 158, 701
Coin v. Brown, 111 Mich. 657, 75
Colburn v. Ellis, 5 Mass. 427, 198
v. Mayor &c., 17 Am. L. Reg. 191, 562
Colchester v. Seaber, 3 Burr. 1870, 445
Colden v. Botts, 12 Wend. 234, 544
v. Thurbur, 2 Johns. 424, 1559
Cole v. Black River Falls, 57 Wis. 110, 196, 447
v. City of Newburyport, 129 Mass. 594, 818
v. City of Shreveport, 41 La. An. 839, 719, 1306
v. City of St. Louis, 132 Mo. 633, 1219, 1380
v. Favorite, 69 Ill. 457, 1757
v. La Grange, 113 U. S. 1, 559, 980
v. Laws, 108 N. C. 185, 226
v. Medina, 27 Barb. 218, 263
v. People, 161 Ill. 16, 725
v. Skrainka, 105 Mo. 303, 1131
v. Trustees &c., 27 Barb. 218, 820
Cole Co. v. Schmidt, 10 S. W. 888, 906
Coleman, In re, 30 Hun 544, 1723
v. Board &c., 50 Cal. 493, 991
v. City of Fargo, 8 N. D. 69, 930
v. Commonwealth, 25 Gratt. 865, 1421, 1422
v. Ormond, 60 Ala. 328, 328
v. Pike Co., 83 Ala. 326, 906, 907
v. Second Ave. R. Co., 38 N. Y. 201, 637
v. State, 47 N. Y. St. 609, 773
Coler v. Board &c., 89 Fed. 257, 1633, 1700
v. Board &c., 6 N. Mex. 88, 1014
v. Cleburne, 131 U. S. 162, 614, 1014, 1015
Coles v. Madison Co., 1 Ill. 154, 61, 83, 759
v. Trustees &c., 10 Wend. 659, 291
Coles Co. v. Allison, 23 Ill. 383, 437, 1691
Colin v. Board &c., 114 Cal. 404, 872
Coll v. City Board &c., 83 Mich. 367, 1665
Collander v. Marsh, 1 Pick. 418, 824
College Street, In re, 5 R. I. 474, 1247
Collensworth v. City of New Whatcom, 16 Wash. 224, 796
Collett v. Mayor &c., 64 N. Y. S. 693, 1358, 1362, 1375, 1376
Collier v. Hyatt, 110 Ga. 317, 1787
Collingwood v. Pace, 1 Vent. 413, 130
Collins v. City of Louisville, 2 B. Mon. 134, 1254
v. City of New Albany, 59 Ind. 396, 392
v. City of Waltham, 151 Mass. 196, 1179
v. Holyoke, 146 Mass. 298, 285
v. Inhabitants &c., 6 Cush. 396, 1618
v. Inhabitants &c., 172 Mass. 78, 815, 816
v. King Co., 1 Wash. 416, 1052
v. McDaniel, 66 Ga. 203, 223
v. Russell, 107 Ga. 423, 201
v. Welch, 58 Iowa 72, 660, 661
Collopy v. Cloherty, 18 Ky. L. 1061, 290
Colman v. Anderson, 10 Mass. 105, 343
v. Shattuck, 62 N. Y. 348, 187
Colorado Pav. Co. v. Murphy, 78 Fed. 28, 1687, 1704
Colter v. Casteel, 37 S. W. 791, 754
Colter v. Morgan, 12 B. Mon. 278, 318
Colton v. Hanchett, 13 Ill. 615, 1701
Columbia v. Harrison, 2 Treadw. Const. 213, 529
v. Hunt, 5 Rich. 550, 1232
Columbia Bridge Co. v. Kline, Bright. 320, 564
Columbia R. Co. v. Hawthorne, 144 U. S. 202, 1627
Columbia Tp. v. Pipes, 122 Ind. 239, 1749
Columbus &c. R. Co. v. Board &c., 65 Ind. 427, 1539
Columbus Water-works Co. v. City of Columbus, 48 Kan. 99, 746
Colville v. Judy, 73 Mo. 651, 696
Colwell v. May's Landing Co., 19 N. J. Eq. 245, 517
Comanche Co. v. Lewis, 138 U. S. 198, 86, 974
Comb v. Bell, 2 Minn. 295, 1165
Comer v. Bankhead, 70 Ala. 493, 216
v. Folsom, 13 Minn. 219, 992
Comesky v. Postal Tel. Cable Co., 41 App. Div. 245, 1773
Commercial Elec. &c. Co. v. City of Tacoma, 20 Wash. 288, 789
Commercial Nat. Bank v. City of Iola, 2 Dillon 353, 55, 980, 982
v. City of Portland, 24 Or. 188, 741, 1306
Commissioner v. Smith, 5 Tex. 471, 224
Commissioners.—See also, Board; Name of county.
Commissioners &c., In re, 49 N. J. L. 488, 564
Commissioners &c., Matter of, 47 Hun 302, 1248
v. Albany Co., 92 U. S. 307, 103
v. Anderson, 20 Kan. 298, 212
v. Aspinwall, 21 How. 539, 1011
v. Auditor &c., 1 Ohio St. 322, 434
v. Babcock, 5 Or. 472, 229
v. Baker, 44 Md. 1, 8
v. Bolles, 94 U. S. 104, 1001, 1002, 1006, 1007, 1022
v. Brewer, 9 Kan. 307, 182, 743
v. Bunker, 16 Kan. 498, 427, 434
v. Call, 123 N. C. 308, 986, 999
v. Clark, 94 U. S. 278, 1002, 1014, 1017, 1031
v. Claw, 15 Johns. 537, 708
v. Commissioners &c., 92 U. S. 307, 14, 434, 767, 1517, 1532
v. Commissioners &c., 79 N. C. 565, 434
v. Commissioners &c., 101 N. C. 520, 1043
v. Commissioners &c., 107 N. C. 291, 438, 439
v. Commissioners &c., 16 Ohio 466, 436
v. Commissioners &c., 2 Ohio St. 508, 436
v. Covey, 74 Md. 262, 509, 595, 1391, 1392
v. Directors &c., 7 Ohio St. 65, 1063
v. Durham, 43 Ill. 86, 705
v. Frank, 1 Jones L. 436, 539
v. Griffin, 134 Ill. 330, 1712
v. Harris, 7 Jones L. 281, 507
v. Hearne, 59 Ala. 371, 300
v. Jackson, 165 Ill. 17, 879
v. January, 94 U. S. 202, 1001, 1006
v. Johnston, 71 N. C. 398, 704
v. Keller, 6 Kan. 510, 941, 952, 959, 960
v. Kent, 5 Neb. 227, 278
v. Leckey, 6 S. & R. 166, 295
v. McCombs, 19 Ohio St. 320, 629
v. McDaniel, 7 Jones L. 107, 196

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Commissioners &c. v. National Land Co., 23 Kan. 196, 245
v. Nelson, 19 Kan. 234, 427
v. Newell, 80 Ill. 587, 977, 1532
v. Norris, 62 Ga. 538, 1725
v. Northern Liberties Gas Co., 12 Pa. St. 318, 500, 502, 506, 508
v. Osborn, 46 Ohio St. 271, 938
v. Quinn, 136 Ill. 604, 1170
v. Ranney, 13 Ohio St. 388, 938
v. Rather, 48 Ala. 433, 412
v. Rollins & Sons, 173 U. S. 255, 998
v. Smuggs, 121 N. C. 394, 986
v. Supervisors &c., 27 Ill. 140, 1724
v. Thayer, 94 U. S. 631, 990, 1001
v. Tomlinson, 9 Kan. 167, 1072
v. Village of East Peoria, 75 Ill. App. 450, 610
v. Walker, 8 Kan. 431, 1263, 1552
v. Zimmerman, 101 Ky. 432, 993, 1021
Common Council &c. v. Board &c., 87 Mich. 113, 1163
v. Huron Copper Min. Co., 57 Mich. 547, 628, 1536
v. State, 5 Ind. 334, 664
Common Schools v. Commissioners &c., 20 Md. 449, 845
Commonwealth, Appeal of, 9 Atl. 524, 1320
v. Abrahams, 156 Mass. 57, 508, 578
v. Adams, 3 Bush 41, 308
v. Adams, 114 Mass. 323, 1642
v. Alburger, 1 Whart. 469, 629
v. Alger, 7 Cush. 53, 594, 1115, 1382
v. Allen, 70 Pa. St. 465, 380, 1690, 1694
v. Arrison, 15 S. & R. 127, 296
v. Athearn, 3 Mass. 285, 1429
v. Baldwin, 1 Watts 54, 1734
v. Bean, 14 Gray 52, 552
v. Bennett, 108 Mass. 30, 84
v. Blaisdell, 107 Mass. 234, 1106
v. Brennan, 150 Mass. 63, 428
v. Brooks, 109 Mass. 355, 509, 552
v. Central Bridge Corporation, 12 Cush. 243, 1575
v. Chase, 6 Cush. 248, 1423, 1424
v. City of Boston, 16 Pick. 442, 1557
v. City of Frankfort, 92 Ky. 149, 588
v. City of Louisville, 20 Ky. L. 893, 1756
v. City of Pittsburg, 14 Pa. St. 177, 168, 285, 301
v. Cluley, 56 Pa. St. 270, 378
v. Cochran, 5 Binn. 87, 1667
v. Comly, 3 Pa. St. 372, 319
v. Commercial Bank, 28 Pa. St. 383, 123, 296
v. Commissioners &c., 6 Binn. 5, 1662
v. Commissioners &c., 16 Serg. & R. 443, 1527
v. Commissioners &c., 9 Watts 466, 295
v. Commissioners &c., 1 Whart. 1, 1662
v. Commissioners &c., 32 Pa. St. 218, 990
v. Commissioners &c., 37 Pa. St. 277, 1016, 1522, 1527, 1530, 1534, 1667
v. Cooley, 10 Pick. 37, 523
v. Coombs, 2 Mass. 489, 634
v. Corcoran, 9 Kulp 507, 297
v. Council &c., 41 Pa. St. 278, 977, 983
v. County Com'rs, 5 Rawle 75, 371
v. Cullen, 13 Pa. St. 133, 447, 1813
Commonwealth v. Curtis, 9 Allen 266, 517, 539, 552, 597
v. Cutter, 156 Mass. 52, 500, 507, 538, 597, 1419
v. Davis, 140 Mass. 485, 484, 485, 500, 509, 602
v. Dean, 110 Mass. 357, 84
v. De Camp, 177 Pa. St. 112, 731
v. Delaware Canal Co., 123 Pa. St. 594, 1521
v. Dow, 10 Met. 382, 517, 519
v. Downing, 6 Mass. 72, 707
v. Dugan, 12 Met. 233, 1433
v. Emminger, 74 Pa. St. 479, 381
v. Emory, 11 Cush. 406, 1418
v. Erie &c. R. Co., 27 Pa. St. 339, 97, 468, 592, 1352
v. Fahey, 5 Cush. 408, 536, 1086
v. Fairfax, 4 Hen. & M. 208, 326
v. Fenton, 139 Mass. 195, 1395
v. Fowler, 10 Mass. 290, 1690
v. Gabbert, 5 Bush 438, 318
v. Genther, 17 S. & R. 135, 211
v. George, 148 Pa. St. 463, 582
v. German Society, 15 Pa. St. 251, 207
v. Goodrich, 13 Allen 546, 1086
v. Hamilton Mfg. Co., 120 Mass. 383, 1811
v. Hankes, 123 Mass. 525, 1418, 1420
v. Hargest, 7 Pa. Co. Ct. 333, 305
v. Hastings, 9 Met. 259, 1433
v. Heffron, 102 Mass. 148, 1422
v. Holmes, 17 Mass. 336, 1106
v. Holmes, 25 Gratt. 771, 317, 319
v. Howard, 149 Pa. St. 302, 281
v. Hubley, 172 Mass. 58, 1386
v. Inhabitants &c., 3 Mass. 406, 1739
v. Inhabitants &c., 1 Pick. 180, 684
v. Inhabitants &c., 2 Pick. 70, 290
v. Johnson, 2 Binney 275, 960
v. Johnson, 6 Pa. St. 136, 1734
v. Judges, 8 Pa. St. 391, 58, 61
v. Justices &c., 2 Pick. 414, 1683
v. Kepner, 10 Phila. 510, 286, 296
v. King, 13 Metc. 115, 1105, 1587
v. Leech, 44 Pa. St. 332, 380, 556, 1690
v. Lennon, 172 Mass. 434, 1362
v. Lowell Gas Co., 12 Allen 75, 4, 1511, 1512
v. Marshall, 69 Pa. St. 328, 1160
v. Matthews, 122 Mass. 60, 487
v. McCafferty, 145 Mass. 384, 483, 500, 552, 601
v. McClelland, 83 Ky. 686, 370
v. McCombs, 56 Pa. St. 436, 66, 69, 70, 197
v. McDonald, 16 Serg. & R. 390, 1559
v. McGroarty, 6 Kulp 195, 84
v. McWilliams, 11 Pa. St. 61, 983
v. Meeser, 44 Pa. St. 341, 380, 1690
v. Mitchell, 82 Pa. St. 343, 1667, 1687
v. Mohn, 52 Pa. St. 243, 1105
v. Moorehead, 118 Pa. St. 344, 1106
v. Mulhall, 162 Mass. 496, 1348
v. New York &c. R. Co., 138 Pa. St. 58, 1681
v. Odenweller, 156 Mass. 234, 539, 1420
v. Page, 155 Mass. 227, 597, 1397, 1402
v. Painter, 10 Pa St. 214, 58, 61, 82
v. Parks, 155 Mass. 531, 595
v. Patch, 97 Mass. 221, 494, 502, 597, 1085, 1094
v. Pennsylvania Benef. Institute, 2 S. & R. 141, 206

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Commonwealth v. Pennsylvania Canal Co., 66 Pa. St. 41, 674
v. People's &c. Bank, 5 Allen 428, 1520
v. Perkins, 7 Pa. St. 42, 1667
v. Perkins, 43 Pa. St. 400, 983, 1526, 1530
v. Peters, 3 Mass. 229, 695, 1572
v. Philadelphia, 132 Pa. St. 288, 1467
v. Pindar, 11 Met. 539, 1411
v. Plaisted, 148 Mass. 375, 468, 493, 500, 551, 552, 1433, 1434
v. Proprietors &c., 2 Gray 339, 831, 832
v. Quarter Sessions, 8 Barr 391, 82
v. Reid, 175 Mass. 325, 1386
v. Rice, 9 Met. 253, 580, 1402
v. Roark, 8 Cush. 210, 1411
v. Robertson, 5 Cush. 438, 500, 517, 1084
v. Rowe, 141 Mass. 79, 537
v. Roxbury, 9 Gray 451, 15
v. Roy, 140 Mass. 432, 506
v. Rush, 14 Pa. St. 186, 629
v. Ryan, 5 Mass. 90, 1417
v. Schubmehl, 3 Lack. Leg. N. 186, 305
v. Select &c. Council, 34 Pa. St. 496, 971, 1523, 1526, 1528, 1530, 1535, 1667
v. Select &c. Council, 88 Pa. St. 66, 1527, 1529
v. Shaw, 7 Met. 52, 347, 348, 351, 362
v. Shaw, 1 Pittsb. 492, 1415
v. Sheldon, 3 Mass. 188, 706
v. Smith, 132 Mass. 289, 368
v. Springfield &c. Co., 10 Bush 254, 990
v. Stark, 2 Cush. 556, 538
v. Steffee, 7 Bush 161, 500
v. Stockley, 12 Phila. 316, 1405
v. Stockton, 5 T. B. Mon. 192, 332
v. Stodder, 2 Cush. 562, 467, 506, 519, 552, 1389, 1404
v. Sutherland, 3 S. & R. 145, 200
v. Tewksbury, 11 Met. 55, 594
v. Towanda Water-Works, 15 Atl. 440, 1688
v. Towles, 5 Leigh 743, 137
v. Union &c. Ins. Co., 5 Mass. 230, 1693
v. Upton, 6 Gray 473, 1106
v. Wentworth, 145 Mass. 50, 360, 362
v. West Chester, 9 Pa. Co. Ct. 542, 1666
v. Westfield Borough, 11 Pa. Co. Ct. 369, 1655
v. Wilkins, 121 Mass. 356, 535, 1403
v. Williamson, 10 Phila. 490, 1494
v. Winthrop, 10 Mass. 177, 707
v. Woelper, 3 S. & R. 29, 185
v. Wolbert, 6 Binn. 292, 650
v. Woods, 44 Pa. St. 113, 593, 1243, 1253
v. Worcester, 3 Pick. 462, 500, 505, 529, 536, 551
v. Wyman, 137 Pa. St. 508, 166, 287
v. Yost, 11 Pa. Super. Ct. 323, 1763
v. Young, 135 Mass. 526, 468, 552
Company &c. v. Atkinson, 6 East 507, 326
Compher v. People, 12 Ill. 290, 318
Comstock v. City of Grand Rapids, 54 Mich. 641, 802, 1200
v. City of Syracuse, 5 N. Y. 874, 895, 896
Comstock v. Incorporated Village of Nelsonville, 61 Ohio St. 288, 720, 728, 745
v. School Committee &c., 17 R. I. 827, 364
Conboy v. Iowa City, 2 Iowa 90, 85, 491, 538, 1418
Concord v. Burleigh, 67 N. H. 106, 1110
v. Boscawen, 17 N. H. 465, 1536, 1542
v. Concord Horse R. Co., 65 N. H. 30, 282
v. Merrimack Co., 60 N. H. 521, 1055
v. Robinson, 121 U. S. 165, 562, 625, 645, 981, 984
Concord R. Co. v. Greeley, 17 N. H. 47, 685
Condict v. Mayor &c., 46 N. J. L. 157, 781, 1096
Condran v. City of New Orleans, 43 La. An. 1202, 710, 743
Conery v. New Orleans Water-Works Co., 142 U. S. 79, 767, 768
v. New Orleans Water-Works Co., 39 La. An. 770, 650
v. New Orleans Water-Works Co., 41 La. An. 910, 572, 636
Congreve v. Morgan, 18 N. Y. 84, 1599
v. Morgan, 5 Duer 495, 745
Conklin v. City of Elmira, 42 N. Y. S. 518, 1342
v. City of Keokuk, 73 Iowa 343, 1227
v. Thompson, 29 Barb. 218, 807
Conklyn v. New York &c. R. Co., 102 N. Y. 107, 1603
Conley v. Chedic, 6 Nev. 222, 1722
v. Supervisors &c., 2 W. Va. 416, 523
Conlin v. Aldrich, 98 Mass. 557, 1657, 1692
v. Board &c., 99 Cal. 17, 926
Connecticut &c. Ins. Co. v. City of Chicago, 185 Ill. 148, 1295
v. Cleveland &c. R. Co., 41 Barb. 9, 1014
Connecticut River R. Co. v. County Com'rs, 127 Mass. 50, 1743
Connellsville Borough v. Gilmore, 15 W. N. C. 343, 1124
Conner v. Beret, 1 Mo. 235, 759
v. Board &c., 57 Ind. 15, 841, 1040
v. Elliot, 18 How. 591, 137
v. Mayor, 2 Sandf. 355, 199, 201
Connett v. City of Chicago, 114 Ill. 233, 1349
Connolly v. Inhabitants &c., 151 Mass. 437, 641, 672
Connor v. Mayor &c., 5 N. Y. 285, 183
Connors v. Carp River Iron Co., 54 Mich. 168, 106
Conover v. Devlin, 15 How. Pr. 470, 197
Conoway v. Ascherman, 94 Ind. 187, 696
Conrad v. Stone, 78 Mich. 635, 161, 162
v. Trustees &c., 16 N. Y. 158, 9, 782, 812, 821, 1587, 1591, 1592
Conroe v. Bull, 7 Wis. 408, 1737
Conservators &c. v. Ash, 10 Barn. & Cress. 349, 38
Consolidated &c. Ass'n v. Avingo, 28 La. An. 552, 1027
Consolidated Traction Co. v. East Orange Tp., 63 N. J. L. 669, 592, 1791, 1814
Construction of Sewer &c., In re, 30 Pittsb. L. J. 18, 1266
Consumers' Gas &c. Co. v. Congress Spring Co., 15 N. Y. S. 624, 681
Continental &c. Co. v. Riggen, 31 Or. 336, 879
Continental Const. Co. v. City of Altoona, 92 Fed. 822, 551, 730

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Converse v. City of Fort Scott, 92 U. S. 503, 991
v. McArthur, 19 Barb. 410, 1062
v. Porter, 45 N. H. 385, 352, 361, 1569
Conway v. City of Beaumont, 61 Tex. 10, 263
v. Russell, 151 Mass. 581, 222
v. St. Louis, 9 Mo. App. 488, 197
v. O'Brien, 11 Ind. 419, 97, 468
v. President &c., 15 Ind. 150, 1252, 1500
Cook v. Boston, 9 Allen 393, 243
v. City of Anamosa, 66 Iowa 427, 776, 1620
v. City of Ansonia, 66 Conn. 413, 1211
v. City of Beatrice, 32 Neb. 80, 985
v. City of Charlestown, 98 Mass. 80, 1613
v. City of Menasha, 103 Wis. 6, 932
v. Commissioners &c., 6 McLean 612, 836
v. Crandall, 7 Utah 344, 1515
v. Harris, 61 N. Y. 448, 1559, 1562
v. Humber, 11 C. B. (N. S.) 33, 127
v. Inhabitants &c., 115 Mass. 571, 1613
v. Luckett, 2 C. B. 168, 128
v. Manufacturing Co., 1 Sneed 698, 982
v. Mayor &c., 54 Ga. 468, 798, 1075
v. Pennsylvania, 97 U. S. 566, 1395
v. Sanitary Dist. &c., 177 Ill. 599, 524
v. Slocum, 27 Minn. 509, 1196, 1253
v. Sudden, 94 Cal. 443, 1560
v. Town of Barton, 63 Vt. 566, 1575
Cook Co. v. Chicago Indust. School, 125 Ill. 540, 1495
v. Harms, 108 Ill. 151, 1756
v. McCrea, 93 Ill. 236, 835
Cooke v. School Dist., 12 Colo. 153, 435, 1487
Cook Farm Co. v. City of Detroit, 124 Mich. 426, 1303
Cool v. Crommet, 13 Maine 250, 693, 1570
Cooley v. Chosen Freeholders &c., 27 N. J. L. 415, 832
Coolidge v. Inhabitants &c., 114 Mass. 592, 16, 641, 671
Coolman v. Fleming, 82 Ind. 117, 697
Coombs v. County Com'rs, 68 Maine 484, 1321
v. Inhabitants &c., 38 Maine 204, 1332
v. MacDonald, 43 Neb. 632, 740
Coonley v. City of Albany, 132 N. Y. 145, 817, 830, 1557
v. City of Albany, 57 Hun 327, 620, 1372
Cooper v. City of Brooklyn, 42 N. Y. S. 762, 550
v. District of Columbia, MacArth. & M. 250, 519
v. Lampeter Tp., 8 Watts 125, 284, 295
v. People, 41 Mich. 403, 536
v. Phibbs, L. R. 2 H. L. 149, 249
v. Schultz, 32 How. 107, 1079
v. Sullivan Co., 65 Mo. 542, 990
v. Town of Delavan, 61 Ill. 96, 865
v. Village of Waterloo, 88 Wis. 433, 1375
Copcutt v. City of Yonkers, 59 Hun 212, 1256
Cope v. Collins, 37 Ark. 649, 1528
v. Thames Haven Dock & R. Co., 3 Exch. 841, 261
Copeland v. Packard, 16 Pick. 217, 687, 1739
Copeland v. State, 126 Ind. 51, 1672
Copes v. Mayor &c., 10 Rich. L. 491, 992
Copp v. Henniker, 55 N. H. 179, 698
Corbalis v. Newberry Tp., 132 Pa. St. 9, 816
Corbett v. City of Troy, 6 N. Y. S. 381, 1607
Corbett v. Widber, 123 Cal. 154, 1553
Corbin v. Cedar Rapids &c. R. Co., 66 Iowa 73, 699
v. Philadelphia, 195 Pa. St. 461, 1801
v. Wisconsin R. Co., 66 Iowa 269, 1573
Corcoran v. Chicago &c. R. Co., 149 Ill. 291, 1706
v. Village of Peekskill, 108 N. Y. 151, 1627
Cordell v. New York &c. R. Co., 64 N. Y. 535, 1641
v. State, 22 Ind. 1, 524
Cordiell v. Frizell, 1 Nev. 130, 168
Corey v. Carter, 48 Ind. 327, 1763
Corfield v. Coryell, 4 Wash. C. C. 371, 137
Corkle v. Maxwell, 3 Blatch. 413, 1725
Corliss v. Corliss, 8 Vt. 373, 340
Cormack v. Wolcott, 37 Kan. 391, 1429
Cornell v. Barnes, 7 Hill 35, 309
v. People, 107 Ill. 372, 1538
v. Town of Guilford, 1 Denio 510, 210, 251, 252, 253, 647
Cornell College v. Iowa Co., 32 Iowa 520, 652
Corning v. Gould, 16 Wend. 531, 1574
v. Greene, 23 Barb. 33, 58, 61
Cornwell v. Metropolitan &c. Com'rs, 10 Exch. 771, 1561
Corporation &c. v. Mayor &c., 5 Cow. 538, 611
Corporation of Amite City v. Clements, 24 La. An. 27, 526
Corporation of Bluffton v. Mathews, 92 Ind. 213, 1624
v. Studabaker, 106 Ind. 129, 861
Corporation of Columbia v. Harrison, 2 Treadw. Const. 213, 528, 534
v. Hunt, 5 Rich. L. 550, 1101
Corporation of Easton v. Neff, 102 Pa. St. 474, 820
Corporation of Gloucester v. Osborn, 1 H. L. Cas. 272, 563
Corporation of Knoxville v. Bird, 12 Lea 121, 1121, 1392
Corporation of Marshall v. Snediker, 25 Tex. 460, 1551
Corporation of Pembroke Tp. v. Canada &c. R. Co., 3 Ont. R. 503, 1349
Correll v. City of Cedar Rapids, 110 Iowa 333, 1753, 1754
Corrigan v. Gage, 68 Mo. 541, 1149, 1406
Cory v. Carter, 48 Ind. 327, 1494
v. Chicago &c. R. Co., 100 Mo. 282, 694
v. Somerset Freeholders, 44 N. J. L. 445, 259
Cosgrove v. City Council &c., 103 Ga. 835, 1387
Cosner v. City of Centerville, 90 Iowa 33, 1802
Costello v. State, 108 Ala. 45, 585, 1364
v. Wyoming, 49 Ohio St. 202, 557
Coster v. Tidewater Co., 18 N. J. Eq. 54, 685, 687
Cotes v. City of Davenport, 9 Iowa 227, 680
Cothran v. City of Rome, 77 Ga. 582, 839
Cottam v. Oregon City, 98 Fed. 570, 1767
Cotter v. Doty, 5 Ohio 394, 532

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Cotterill v. Starkey, 8 Car. & P. 691, 1637
Cotton v. Atkinson, 53 Ark. 98, 328
v. Commissioners &c., 6 Fla. 610, 858, 983
v. Davies, 1 Str. 53, 157
v. Ellis, 7 Jones L. 545, 183
v. Inhabitants &c., 47 N. J. L. 401, 1741
v. Mississippi &c. Co., 22 Minn. 372, 45
v. Phillips, 56 N. H. 220, 185, 198
Coughlan v. City of Cambridge, 166 Mass. 268, 790
Cougot v. City of New Orleans, 16 La. An. 21, 581
Coulson v. City of Portland, Deady 481, 877, 880, 952
Coulter v. Coulter, 81 Ind. 542, 1095
v. Robertson, 24 Miss. 278, 410
Council &c. v. Hardson, 88 Ga. 599, 1333
v. People, 78 Ill. 382, 1668
County—See Board; Commissioners; County Com'rs; Name of County.
County Com'rs v. Baker, 44 Md. 1, 223
v. Burgess, 61 Md. 29, 1632
v. Chandler, 96 U. S. 205, 981
v. County Com'rs &c., 50 Md. 245, 7, 13, 14
v. County Com'rs, 1 Wyo. Ter. 140, 438
v. Diebold State &c. Co., 133 U. S. 473, 1191
v. Duckett, 20 Md. 468, 218, 222, 1546
v. Duvall, 54 Md. 351, 226
v. Hunt, 5 Ohio St. 488, 655
v. King, 13 Fla. 451, 280, 427, 433, 443, 1528, 1529
v. Lineberger, 3 Mont. 231, 319
v. Melvin, 89 Md. 37, 1685
v. People, 11 Ill. 202, 1683
v. President &c., 51 Md. 465, 393
v. State, 24 Fla. 263, 425, 426, 432
County Court v. Bareman, 34 W. Va. 362, 893
v. Griswold, 58 Mo. 175, 685
v. People, 58 Ill. 456, 624
v. Robinson, 27 Ark. 116, 1494
Courser v. Powers, 34 Vt. 517, 187, 198
Courtney v. Louisville, 12 Bush 419, 983, 1515, 1517
Covington v. City of East St. Louis, 78 Ill. 548, 54, 106, 494, 845, 1517
v. Kentucky, 173 U. S. 231, 74, 90, 104, 120, 713
v. Rockingham, 93 N. C. 134, 1717
Covington Co. v. Dunklin, 52 Ala. 277, 1527
Covington &c. R. Co. v. City of Covington, 9 Bush 127, 586
v. Ingles, 15 B. Mon. 637, 1806
v. Mayor &c., 85 Ga. 367, 233, 235, 589
Cowart v. Foxworth, 67 Miss. 322, 843, 1489
Cowdin v. Huff, 10 Ind. 83, 183
Cowdrey v. Town of Canadea, 16 Fed. 532, 990
Cowen v. Village of West Troy, 43 Barb. 48, 97, 468, 494, 644
Cowie v. City of Seattle, 22 Wash. 659, 1329, 1359, 1362, 1801
Cowles v. Brittam, 2 Hawks 204, 1714
v. School Dist., 23 Neb. 655, 1472
Cowley v. City of Spokane, 99 Fed. 840, 1291
v. Town of Rushville, 60 Ind. 327, 521
Cox v. City of Chicago, 83 Ill. App. 540, 1798
Cox v. City of Des Moines, 111 Iowa 646, 1328
v. City of St. Louis, 11 Mo. 431, 85, 538
v. James, 59 Barb. 144, 1564
Coy v. City Council, 17 Iowa 1, 1526, 1527, 1530, 1680
Coykendall v. Hood, 55 N. Y. S. 718, 514, 1710
Coyle v. Gray, 7 Houst. 44, 577
Crabtree v. Gibson, 78 Ga. 230, 1172, 1288
Crafford v. Supervisors &c., 87 Va. 110, 3
Craft v. Lofinck, 34 Kan. 365, 427
Crafts v. Inhabitants &c., 47 Maine 141, 1744
Craig v. Burnett, 32 Ala. 728, 1507
v. Charleston, 78 Ill. 372, 789
v. City of Charleston, 180 Ill. 154, 812
v. City of Philadelphia, 89 Pa. St. 265, 1254, 1271
v. City of Sedalia, 63 Mo. 417, 1580
v. City of Vicksburg, 31 Mass. 216, 1012
v. First Presbyterian Church, 88 Pa. St. 42, 374
v. Rochester &c. R. Co., 39 N. Y. 404, 1582
v. Secrist, 54 Ind. 419, 664
v. Town of Andes, 93 N. Y. 405, 987
Cram v. City of Chicago, 139 Ill. 265, 1173, 1174
Cramer v. City of Burlington, 45 Iowa 627, 1797
v. City of Charleston, 176 Ill. 507, 511, 1289
Crampton v. Zabriskie, 101 U. S. 601, 651, 653, 1698, 1728
Crandall v. Amador Co., 20 Cal. 72, 1679
v. Nevada, 6 Wall. 35, 138
v. State, 10 Conn. 339, 137
Crane v. City of Fond du Lac, 16 Wis. 196, 13, 1527, 1530
v. City of Janesville, 20 Wis. 321, 1254
v. School Dist., 61 Mich. 299, 852
v. Siloam Springs, 67 Ark. 30, 481, 1309, 1378, 1449
Cranston v. Augusta, 61 Ga. 572, 544
Craw v. City of Tolono, 96 Ill. 255, 1143, 1262, 1268, 1300, 1303
Crawford v. Bradford, 23 Fla. 404, 1721
v. Dunbar, 52 Cal. 36, 185, 378
v. Meredith, 6 Ga. 552, 310
v. Town of Rutland, 52 Vt. 412, 1573
v. Village of Delaware, 7 Ohio St. 459, 824
v. Wilson, 4 Barb. 504, 1475
Crawford Co. v. Iowa Co., 2 Pin. 368, 424
Crawfordsville Music Hall Ass'n v. Clements, 12 Mo. App. 464, 1286
Crawn v. Commonwealth, 84 Va. 282, 315
Crawshaw v. City of Roxbury, 7 Gray 374, 669, 715
Craycraft v. Selvage, 10 Bush 696, 210, 646
Creager v. Wright School Dist., 62 Mich. 101, 1480
Crebs v. City of Lebanon, 98 Fed. 549, 463, 716, 882, 1752
Creed v. Hartmann, 29 N. Y. 591, 212, 745
Cregier v. Mayor &c., 11 Daly 171, 178
Creighton v. Board &c., 42 Cal. 446, 763, 1522
v. Commonwealth, 83 Ky. 142, 313
v. Manson, 27 Cal. 613, 480
v. Piper, 14 Ind. 182, 185
v. Scott, 14 Ohio St. 438, 1262

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Crepps v. Durden, Cowp. 640, 535
Crescent City G. L. Co. v. New Orleans G. L. Co., 27 La. An. 138, 1808
Crescent Tp. v. Anderson, 114 Pa. St. 643, 1633
Creston Water Works Co. v. City of Creston, 101 Iowa 687, 720, 876
Crist v. Brownsville Tp., 10 Ind. 461, 295
Crites v. City of New Richmond, 98 Wis. 55, 1803
Crittenden v. Terrill, 2 Head 588, 329
Crittenden Co. v. Shanks, 88 Ky. 475, 916
Crocker v. McGregor, 76 Maine 282, 1614
Crockett v. City of Boston, 5 Cush. 182, 687, 1159
Crofut v. City of Danbury, 65 Conn. 294, 638
Croll v. Village of Franklin, 40 Ohio St. 340, 528
Cromartie v. Commissioners &c., 87 N. C. 134, 1528
Crommett v. Pearson, 18 Maine 344, 294, 866
Cromwell v. Sac Co., 96 U. S. 51, 1000, 1018, 1020, 1026, 1027
Cronan v. Municipality &c., 5 La. An. 537, 1305
Cronin v. Patrick Co., 89 Fed. 79, 999
v. People, 82 N. Y. 318, 611, 1402
v. Stoddard, 97 N. Y. 271, 197, 311, 313
Cronly v. City of Tucson, 56 Pac. 876, 988
Crook v. People, 106 Ill. 237, 90, 103
Cropper v. City of Mexico, 62 Mo. App. 385, 1335
Crosby v. Hanover, 36 N. H. 404, 1323
Cross v. Cherry, 122 Pa. St. 417, 561
v. City of Kansas, 90 Mo. 13, 1224
v. Hecker, 75 Md. 574, 1413, 1417
v. Mayor &c., 18 N. J. Eq. 305, 259, 464, 465, 1106, 1254, 1288
v. School Directors, 24 Ill. App. 191, 1482
Crossett v. City of Janesville, 28 Wis. 420, 680
Crouse, Ex parte, 4 Whart. 9, 1071
Crow v. Board &c., 118 Ind. 51, 1038
v. Oxford, 119 U. S. 215, 645
Crowder v. Town of Sullivan, 128 Ind. 486, 568, 877, 889, 1038
Crowell v. Crispin, 4 Daly 100, 215
v. Sonoma Co., 25 Cal. 313, 788, 814
Crowly v. Copely, 2 La. An. 329, 1270
Crowmen v. Wellsville Water Co., 3 N. Y. S. 177, 1456
Crudup v. Ramsey, 54 Ark. 168, 958
Cruger v. Dougherty, 43 N. Y. 107, 1533
v. Hudson River R. Co., 12 N. Y. 190, 698
Cruickshank v. City of Chicago, 181 Ill. 415, 512
Cruikshanks v. City Council, 1 McCord 360, 1714
Crume v. Wilson, 104 Ind. 583, 699
Cudd v. Calvert, 54 S. C. 457, 610
Cudden v. Eastwick, 1 Salk. 143, 9
Culbertson v. City of Fulton, 127 Ill. 30, 877, 880, 883, 888, 923
v. Coleman, 47 Wis. 193, 558
Cullen v. Town of Carthage, 103 Ind. 196, 663, 664, 861
Culver v. Armstrong, 77 Mich. 194, 1496
v. City of Streator, 130 Ill. 238, 799
v. People, 161 Ill. 89, 1289
v. Third Nat. Bank, 64 Ill. 528, 524
Culverson v. City of Maryville, 67 Mo. App. 343, 1328
Cuming v. City of Grand Rapids, 46 Mich. 150, 1253
Cumins v. Lawrence Co., 1 S. Dak. 158, 1024
Cumming v. Mayor &c., R. M. Charlt. 26, 1500, 1508
v. Mayor &c., 11 Paige 596, 175, 741, 1306
v. United States, 22 Ct. Cl. 344, 772
Cummings v. Brown, 43 N. Y. 514, 332
v. City of St. Louis, 90 Mo. 259, 577, 629, 1698
v. Clark, 15 Vt. 653, 198
v. Huse &c. Ice Co., 156 Mo. 28, 1373
v. Peters, 56 Cal. 593, 688
v. Village of New Rochelle, 56 N. Y. S. 701, 1326, 1330
v. West Chicago Park Com'rs, 181 Ill. 136, 1136, 1149, 1236
Cummins v. City of Seymour, 79 Ind. 491, 647, 1177, 1179, 1776
v. Des Moines &c. R. Co., 63 Iowa 397, 701
v. District Tp. &c., 42 Fed. 644, 1024
v. National Bank, 101 U. S. 153, 1288
Cunningham v. Bucklin, 8 Cow. 178, 335
v. Campbell, 33 Ga. 625, 697
v. City of Cleveland, 98 Fed. 657, 728, 740, 744, 882
v. City of Denver, 23 Colo. 18, 1333
v. City of Griffin, 107 Ga. 690, 599
v. City of Peoria, 157 Ill. 499, 1135, 1244
v. Corporation &c. of Almonte, 21 Up. Can. C. P. 459, 521
v. Macon &c. R. Co., 109 U. S. 446, 18
v. Squires, 2 W. Va. 422, 1419
Cupp v. Board &c., 19 Ohio St. 173, 692
Curran v. Arkansas, 15 How. 304, 410, 760
v. City of Boston, 151 Mass. 505, 8
v. City of Louisville, 83 Ky. 628, 1574
v. Shattuck, 24 Cal. 427, 1571
Currier v. Concord, 68 N. H. 294, 930
Curry v. District of Columbia, 14 App. D. C. 423, 1809
v. District Tp. &c., 62 Iowa 104, 12
v. Jones, 4 Del. Ch. 559, 1288
v. Mayor &c., 64 Ga. 290, 1530
v. President &c., 15 Ill. 320, 591
Curtis v. Butler Co., 24 How. 435, 1014
v. Gowan, 34 Ill. App. 516, 181, 664, 941
v. Lyman, 24 Vt. 338, 229
v. Pocahontas Co., 72 Iowa 151, 1572
v. Whipple, 24 Wis. 350, 548, 610, 980, 1542
Cushing v. Frankfort, 57 Maine 521, 289
v. Inhabitants &c., 6 Cush. 389, 662, 664
v. Inhabitants &c., 125 Mass. 526, 823
Cushman v. Smith, 34 Maine 247, 705
Cutcomp v. Utt, 60 Iowa 156, 1257
Cutler v. Inhabitants &c., 121 Mass. 588, 215
v. Town of Russellville, 40 Ark. 105, 299, 477
Cutliff v. Mayor &c., 60 Ga. 597, 1520
Cutter v. Demmon, 111 Mass. 348, 211
Cuyler v. Trustees &c., 12 Wend. 165, 251, 647
Cypress Pond Draining Co. v. Hooper, 2 Met. 350, 689

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

D

Dabney's Adm'r v. Smith, 5 Leigh 13, 323
Dady v. Mayor &c., 57 Hun 456, 1176
Dafoe v. Harshaw, 60 Mich. 200, 186
Daggett v. City of Cohoes, 54 Hun 639, 1180
v. Hudson, 43 Ohio St. 548, 369, 370, 371
v. Town of Mendon, 64 Vt. 323, 367
Dailey v. State, 8 Blackf. 329, 185
Daily v. Swope, 47 Miss. 367, 1269, 1270, 1532
Dair v. United States, 16 Wall. 1, 310
Dale v. City of St. Joseph, 59 Mo. App. 566, 1211
v. Delaware &c. R. Co., 73 N. Y. 468, 1627, 1628
v. Irwin, 78 Ill. 170, 353, 372
v. Webster Co., 76 Iowa 370, 1802
Daley v. Norwich &c. R. Co., 26 Conn. 591, 794
Dallas v. Fosdick, 40 How. Pr. 249, 1494
Dallas Co. v. McKenzie, 110 U. S. 686, 998, 1024
Dallas Elect. Co. v. City of Dallas, 23 Tex. Civ. App. 323, 751, 875
Dalton v. Angus, 6 App. Cas. 740, 829, 1779
v. City of Salem, 139 Mass. 91, 1624
v. State, 43 Ohio St. 652, 381
v. Upper Tyrone Tp., 137 Pa. St. 18, 816
Daly v. City of San Francisco, 72 Cal. 154, 647, 1186
v. Georgia &c. R. Co., 80 Ga. 793, 586, 590
v. Morgan, 69 Md. 460, 383, 386, 388, 1521
Dalzell v. City of Davenport, 12 Iowa 437, 680
Dammann v. City of St. Louis, 152 Mo. 186, 1801
Damon v. Inhabitants &c., 2 Pick. 345, 7, 284, 286, 290, 294, 357
Dana v. City of Boston, 176 Mass. 97, 1772
Danaher v. City of Brooklyn, 119 N. Y. 241, 808
Dane v. Gilmore, 51 Maine 544, 329
Danforth v. Durrell, 8 Allen 242, 1561
v. Village of Hinsdale, 177 Ill. 579, 1144, 1277
Daniel v. City of New Orleans, 26 La. An. 1, 1257
v. Mayor &c., 11 Humph. 582, 90, 103, 663
Daniels v. Chicago &c. R. Co., 35 Iowa 129, 706
v. City of Des Moines, 108 Iowa 484, 175
v. Intendant, 55 Ga. 609, 1577
v. Lebanon, 58 N. H. 284, 1639
v. Long, 111 Mich. 562, 1685
v. Municipal Council &c., 10 Up. Can. Q. B. 478, 211
v. Tearney, 102 U. S. 415, 649, 650
Dannot v. Mayor, 66 N. Y. 585, 722
Danolds v. State, 89 N. Y. 36, 771
D'Antignac v. City Council, 31 Ga. 700, 1254
Danville v. Shelton, 76 Va. 325, 1521
Danville &c. Co. v. Park, 88 Ill. 463, 1513
Dapper v. City of Milwaukee, 107 Wis. 88, 1343, 1806
Darby v. Sharon Hill, 112 Pa. St. 66, 422
Darcantel v. People's Slaughter House &c. Co., 44 La. An. 632, 481, 582
Dargan v. Mayor &c., 31 Ala. 469, 1075
Darling v. City of Bangor, 68 Maine 108, 1585
v. City of St. Paul, 19 Minn. 389, 282, 1405
v. Gunn, 50 Ill. 424, 1238
v. Westmoreland, 52 N. H. 401, 1614, 1618
Darlington v. Commonwealth, 41 Pa. St. 68, 692, 1425
v. Jackson Co., 101 U. S. 688, 1001
v. Laclede, 4 Dill. 200, 1024
v. Mayor &c., 31 N. Y. 164, 799, 800, 1083, 1394, 1744
Darrow v. People, 8 Colo. 417, 169, 185
Darst v. People, 51 Ill. 286, 606
Dartmouth v. County Com'rs, 153 Mass. 12, 290
Dartmouth College v. Woodward, 4 Wheat. 518, 2, 4, 74, 75, 81, 84 510, 767, 771
Dartmouth Sav. Bank v. School Districts, 16 Dak. 332, 626, 1485
Dasent, In re, 2 N. Y. S. 609, 935
Dasey v. Skinner, 11 N. Y. S. 821, 1235
Dashiell v. Mayor &c., 45 Md. 615, 1262
Daugherty v. Brown, 91 Mo. 26, 1225, 1568
Dausch v. Crane, 109 Mo. 323, 303
Davenant v. Hurdis, Moor. 576, 467
Davenport v. Buffington, 97 Fed. 234, 1698
v. Dodge Co., 105 U. S. 237, 1528
v. Inhabitants &c., 10 Maine 317, 362, 866
v. Kleinschmidt, 6 Mont. 502, 569, 642, 848, 897
v. Kleinschmidt, 8 Mont. 467, 897
v. Mayor &c., 67 N. Y. 456, 185
v. Ruckman, 37 N. Y. 568, 1592, 1639
v. Town of Johnson, 49 Vt. 403, 871
Davenport &c. Ass'n v. Schmidt, 15 Iowa 213, 1570
Davenport &c. Co. v. City of Davenport, 13 Iowa 229, 468, 491, 1417
Davenport &c. R. Co. v. Lowry, 51 Iowa 486, 1726
Davey v. Baker, 4 Burr. 2471, 538
Davidson v. City of Chicago, 178 Ill. 582, 1146, 1148, 1154
v. City of Muskegon, 111 Mich. 454, 930
v. County Commissioners, 18 Minn. 482, 983
v. Mayor &c., 27 How. Pr. 342, 103, 763, 1394
v. Mayor &c., 54 N. Y. S. 51, 785
v. New Orleans, 96 U. S. 97, 559, 694, 1238, 1239, 1262, 1302, 1715
Davies v. City of Galveston, 16 Tex. App. 13, 1143
v. City of Los Angeles, 86 Cal. 37, 692
v. City of Saginaw, 87 Mich. 439, 1193, 1236, 1253, 1255, 1261
v. Fairbairn, 3 How. 636, 111, 495
v. McKeeby, 5 Nev. 369, 369
v. Morgan, 1 Cromp. & J. 587, 500, 533
v. New York &c. Co., 48 N. Y. Super. Ct. 492, 210
Daviess Co. v. Dickinson, 117 U. S. 657, 210, 233, 637, 890, 981, 982, 998, 1000
v. Huidekoper, 98 U. S. 98, 999, 1001
Davis v. Berger, 54 Mich. 652, 187
v. Brace, 82 Ill. 542, 1540
v. Capper, 10 B. & C. 28, 221
v. City Council &c., 51 Ala. 139, 264, 820
v. City of Austin, 22 Tex. Civ. App. 460, 1799

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Davis v. City of Bangor, 42 Maine 522, 831, 832, 1112, 1613
v. City of Clinton, 55 Iowa 549, 1714
v. City of Crawfordsville, 119 Ind. 1, 1220
v. City of Des Moines, 71 Iowa 500, 891
v. City of Dubuque, 20 Iowa 458, 1516
v. City of Kingston, 5 N. Y. S. 506, 1617
v. City of Knoxville, 90 Tenn. 599, 805, 1075
v. City of Litchfield, 145 Ill. 313, 1146, 1149, 1300, 1498
v. City of Litchfield, 155 Ill. 390, 522, 1236, 1300
v. City of Lynchburg, 84 Va. 861, 1268
v. City of Newark, 54 N. J. L. 144, 595, 1248
v. City of Omaha, 47 Neb. 836, 1333
v. East Tennessee &c. R. Co., 87 Ga. 605, 586, 590
v. Inhabitants &c., 4 Allen 557, 1332, 1601
v. Inhabitants &c., 140 Mass. 422, 1622
v. Massachusetts, 167 U. S. 43, 1406
v. Mayor &c., 61 Mich. 530, 714, 1586
v. Mayor &c., 14 N. Y. 506, 568 579, 586, 637, 1108, 1323, 1352, 1610
v. Mayor &c., 1 Duer 451, 516, 708
v. Mayor &c., 64 Ga. 128, 1507, 1520
v. Morgan, 1 Cromp. & J. 587, 100
v. Patterson, 12 Pa. Super. Ct. 479, 1644
v. Read, 65 N. Y. 566, 282, 1539
v. School Dist., 24 Maine 349, 259, 644, 1212
v. School Dist., 81 Mich. 214, 852, 1473, 1491
v. School Dist., 43 N. H. 381, 366
v. School Dist., 44 N. H. 398, 370
v. Smith, 130 Mass. 113, 687
v. Town of Anita, 73 Iowa 325, 500, 1368
v. Town of Point Pleasant, 32 W. Va. 289, 62, 1518
v. Woolnough, 9 Iowa 104, 1413
v. Yuba Co., 75 Cal. 452, 1017
Davison v. Otis, 24 Mich. 23, 543
Dawes v. Jackson, 9 Mass. 260, 216
Daws v. Town of Elmwood, 34 Fed. 114, 1017
Dawson v. Aurelius Tp., 49 Mich. 479, 1726
Dawson Co. v. Clark, 58 Neb. 756, 1548, 1554
Dawson &c. Co. v. Carver, 95 Ga. 565, 1709
Day v. Board &c., 102 Mass. 310, 1743
v. City of Clinton, 6 Ill. App. 476, 521
v. City of Morristown, 63 N. J. L. 353, 106
v. Day, 94 N. Y. 153, 1579
v. Gallup, 2 Wall. 97, 330
v. Green, 4 Cush. 433, 281, 468, 1759
v. Inhabitants &c., 5 Allen 98, 1592, 1612
v. Putnam Ins. Co., 16 Minn. 408, 671
v. Reynolds, 23 Hun 131, 228
v. Savage, Hob. 212, 467
Dayton v. Quigley, 29 N. J. Eq. 77, 500
Dayton Tp. v. Rounds, 27 Mich. 82, 1529
Deady v. Village of Lyons, 57 N. Y. S. 448, 1549, 1553
Dean v. Borchsenius, 30 Wis. 236, 559, 1234
v. City of New York, 61 N. Y. S. 374, 722
v. Davis, 51 Cal. 406, 4, 5, 1084
v. Lufkin, 54 Tex. 265, 1535
v. Randolph, 132 Mass. 475, 815
Deane v. Inhabitants &c., 132 Mass. 475, 803, 1159
v. Todd, 22 Mo. 90, 1722
De Baker v. Southern &c. R. Co., 106 Cal. 257, 797, 1208
De Blois v. Barker, 4 R. I. 445, 1198
De Boest v. Gambell, 35 Or. 368, 175, 1769
Debs, In re, 158 U. S. 564, 1706
Decatur v. Stoops, 21 Ind. App. 397, 1330
Decatur Co. Board &c. v. State, 86 Ind. 8, 1525
Decatur Gas &c. Co. v. City of Decatur, 24 Ill. App. 544, 639, 1468
Dechert v. Commonwealth, 113 Pa. St. 229, 1667
Decorah v. Dustan, 38 Iowa 96, 1405
Decraw St., Matter of, 18 Wend. 568, 1233
Deeds v. Sanborn, 26 Iowa 419, 1516
Deel v. City of Pittsburgh, 3 Watts 363, 529
Deems v. Mayor &c., 80 Md. 164, 600, 1703
Defer v. City of Detroit, 67 Mich. 346, 1215
Defiance Water Co. v. City of Defiance, 90 Fed. 753, 728, 1132
De Forth v. Wisconsin &c. R. Co., 52 Wis. 320, 987
De Fremery v. Austin, 53 Cal. 380, 1551
De Grave v. Mayor &c., 4 Car. & P. 111, 288
Dehall v. Morford, 95 Cal. 457, 1259
De Hart v. Atlantic City, 62 N. J. L. 586, 75
v. McGuire, 10 Phila. 359, 322
Dehm v. City of Havana, 28 Ill. App. 520, 888
Delman v. City of Fort Madison, 30 Iowa 542, 1516
Deitz v. City of Central, 1 Colo. 323, 47, 528, 529
DeLacey v. City of Brooklyn, 12 N. Y. S. 540, 165
Delacey v. Neuse &c. Co., 1 Hawks 274, 207
Delafield v. Illinois, 2 Hill 159, 253, 258, 259, 715
v. Illinois, 26 Wend. 192, 217
v. Village of Westfeld, 58 N. Y. S. 277, 722
Delahanty v. Warner, 75 Ill. 185, 207, 1697
Delamater v. City of Chicago, 158 Ill. 575, 511, 1275, 1277
Delancy, Matter of, 52 N. Y. 80, 1205
De Lano v. Doyle, 120 Mich. 258, 1393
Delano v. Mayor &c., 32 Hun 144, 1265
Delany v. Gault, 30 Pa. St. 63, 693
Delaware &c. Canal Co. v. Camden &c. R. Co., 1 C. E. Green 321, 584
v. Village of Whitehall, 90 N. Y. 21, 591
Delaware Co. v. McClintock, 51 Ind. 325, 982
v. McDonald, 46 Iowa 170, 1068
Delaware &c. R. Co. v. City of Buffalo, 158 N. Y. 266, 1365
Delaware Railroad Tax, 18 Wall. 206, 1501
Delcambre v. Clere, 34 La. An. 1050, 1532

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Delgado, In re, 140 U. S. 586, 1666
v. Chavez, 5 N. M. 646, 1666
Dells v. Kennedy, 49 Wis. 555, 370
Delmonico v. New York, 1 Sandf. 222, 811
De Loge v. New York &c. R. Co., 157 N. Y. 688, 483
Demarest v. Mayor &c., 74 N. Y. 161, 74, 90, 103
v. Wickham, 63 N. Y. 320, 288, 297
Demby v. City of Kingston, 14 N. Y. S. 601, 1111
Dempsey v. City of Rome, 94 Ga. 420, 1317
Dempster v. City of Chicago, 175 Ill. 278, 1276, 1280
Denair v. City of Brooklyn, 5 N. Y. S. 835, 1746
Denham v. County Com'rs, 108 Mass. 202, 687, 1557
Denison &c. R. Co. v. James, 20 Tex. Civ. App. 358, 1152, 1380, 1777
Denman v. St. Paul R. Co., 26 Minn. 357, 1641
Dennehy v. City of Chicago, 120 Ill. 627, 1399
Dennett v. Nevers, 7 Maine 399, 866
Denning v. Roome, 16 Wend. 651, 1422, 1423, 1424, 1559, 1560, 1562
v. Yount, 9 Kan. App. 708, 516, 525
Dennis v. Maynard, 15 Ill. 37, 1084
Dennison v. Kansas City, 95 Mo. 416, 1257, 1258
Denniston v. Clark, 125 Mass. 216, 335
v. School Dist., 17 N. H. 492, 339, 341, 343, 1485
Denny v. City of Spokane, 79 Fed. 719, 741, 879
v. Denny, 113 Ind. 22, 655
Denton v. Jackson, 2 Johns. Ch. 320, 50, 1536
Denver &c. R. Co. v. Barsaloux, 15 Colo. 290, 1652
v. City of Denver, 2 Colo. App. 34, 1405
v. City of Denver, 21 Colo. 350, 1505
v. Domke, 11 Colo. 247, 1352, 1652
v. Glasscott, 4 Colo. 270, 1614
v. Nestor, 10 Colo. 408, 1652
De Pauw Plate Glass Co. v. City of Alexandria, 152 Ind. 443, 1552
De Pierris, Petition of, 82 N. Y. 243, 1256
Dermont v. Mayor &c., 4 Mich. 435, 1215
Dermott v. State, 99 N. Y. 101, 568
Derry v. Rockingham Co., 62 N. H. 485, 1043
De Saussure v. Gaillard, 127 U. S. 216, 18
Desha Co. v. Newman, 32 Ark. 788, 945
Deskins v. Gose, 85 Mo. 485, 1493
Desmare v. United States, 93 U. S. 605, 1042
Des Moines Co. v. Harker, 34 Iowa 84, 17
Des Moines Gas Co. v. City of Des Moines, 44 Iowa 505, 110, 466, 568, 618, 1371, 1703, 1704
Des Moines Water Co.'s Appeal, 48 Iowa 324, 1511, 1512
Des Plaines v. Poyer, 22 Ill. App. 574, 1120
D'Esterre v. City of Brooklyn &c., 90 Fed. 586, 1007, 1013, 1031
Detroit v. Martin, 34 Mich. 170, 245, 247, 1263, 1552
v. Osborne, 135 U. S. 492, 817, 1341, 1342, 1593
Detroit &c. Ass'n v. Highway Com'rs, 34 Mich. 36, 628
Detroit &c. Plank Road Co. v. Macomb Circuit Judge, 109 Mich. 371, 1707
Detroit &c. R. Co. v. Bearss, 39 Ind. 598, 348
v. City of Detroit, 64 Fed. 628, 1351, 1812
v. City of Detroit, 110 Mich. 384, 1351
v. City of Grand Rapids, 106 Mich. 15, 1250
v. Mills, 85 Mich. 634, 682, 683
De Turk v. Commonwealth, 12 Pa. St. 151, 185
Deufel v. Long Island City, 46 N. Y. S. 355, 1342
De Varaigne v. Fox, 2 Blatchf. 95, 675, 685, 759
Devay v. Mayor &c., 35 Barb. 264, 150
Devenish v. City of Spokane, 21 Wash. 77, 1337
Devenpeck v. Lambert, 44 Barb. 596, 1567
Dever v. City of Junction City, 45 Kan. 417, 1194
Devereaux v. City of Brownsville, 29 Fed. 742, 455, 1524
Devlin v. Mayor &c., 63 N. Y. 8, 1192
v. Smith, 89 N. Y. 470, 1591
Devoe v. School Dist., 77 Mich. 610, 852, 1491
Devor v. M'Clintock, 9 W. & S. 80, 1519
Devore's Appeal, 56 Pa. St. 163, 1517
De Voss v. City of Richmond, 18 Gratt. 338, 1017
Den v. Carson, 26 N. J. L. 228, 1234
v. Judges, 3 Hen. & Mun. 1, 1657
De Walt v. Bartley, 146 Pa. St. 529, 376
Dewein v. City of Peoria, 24 Ill. App. 396, 1177
Dewey v. Central Car Co., 42 Mich. 399, 1737
v. City of Des Moines, 173 U. S. 193, 1262
v. City of Des Moines, 101 Iowa 416, 1130, 1139, 1242
Dewhurst v. City of Allegheny, 95 Pa. St. 437, 802
Dewire v. Bailey, 131 Mass. 169, 1587
De Witt v. Village of Ithaca, 15 Hun 568, 1564
De Wolf v. Watterson, 35 Hun 111, 1491
Dexter v. City of Boston, 176 Mass. 247, 1271, 1305
v. Town Council &c., 17 R. I. 222, 1401
Dey v. Lee, 4 Jones L. 238, 301
v. Mayor &c., 19 N. J. Eq. 412, 253, 279, 481, 1212
Deyo v. Otoe Co., 37 Fed. 246, 992, 1022
Diamond v. City of Brooklyn, 36 N. Y. S. 97, 1325
Dibble v. Town of New Haven, 56 Conn. 199, 859
Dickerson v. Franklin, 112 Ind. 178, 1516
Dickey v. City of Chicago, 164 Ill. 37, 1144
v. City of Chicago, 179 Ill. 184, 1153
v. Hurlburt, 5 Cal. 343, 368
v. People, 160 Ill. 633, 1303
v. Polk, 58 Iowa 287, 1726
v. Tennison, 27 Mo. 373, 687
Dickinson v. City of Poughkeepsie, 75 N. Y. 65, 647, 851
v. Mayor &c., 92 N. Y. 584, 1746
v. Worcester, 7 Allen 127, 1216
Dickinson Hardware Co. v. Pulaski Co., 55 Ark. 437, 619

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Dickson v. City of Racine, 61 Wis. 545, 561, 1499
v. Kewanee &c. Co., 53 Ill. App. 379, 1348
Dieckmann v. Sheboygan Co., 89 Wis. 571, 1236
Diefenthaler v. Mayor &c., 111 N. Y. 331, 244, 246, 1203, 1264
Dieschel v. Town of Maine, 81 Wis. 553, 281
Dietz v. City of Neenah, 91 Wis. 422, 1242, 1701
Diggins v. Brown, 76 Cal. 318, 1206
v. Hartshorne, 108 Cal. 154, 1270
Dilcher v. Raap, 73 Ill. 266, 223
Dill v. Inhabitants &c., 7 Met. 438, 210, 251, 646
v. Roberts, 30 Wis. 178, 558
Dillard v. Webb, 55 Ala. 468, 282
Dillingham v. Snow, 5 Mass. 547, 48, 86, 87, 1475, 1727
Dillon v. City of Raleigh, 124 N. C. 184, 1329, 1332, 1362
v. City of Syracuse, 9 N. Y. S. 98, 1212
v. Myers, Bright. 426, 197
Dimock v. Town of Suffield, 30 Conn. 129, 1612
Dingley v. City of Boston, 100 Mass. 544, 675, 685, 689
Dingman v. People, 51 Ill. 278, 1105
Dingwall v. Common Council, 82 Mich. 568, 292, 297
Dinwiddie v. President &c., 37 Ind. 66, 1288
Directors &c. v. Donnelly (Pa.), 7 Atl. 204, 948
v. Houston, 71 Ill. 318, 4, 6
v. Malany, 64 Pa. St. 144, 1063
Dishon v. Smith, 10 Iowa 212, 152, 349, 368, 381, 1508
District &c. v. District &c., 18 Mo. App. 266, 1495
v. Macloon, 4 Wis. 79, 436
v. People, 75 Ill. App. 539, 1806
District of Clifton &c. v. Schneider, 21 Ky. L. 212, 1307
District of Columbia v. Armes, 107 U. S. 519, 1617
v. Ashton, 14 App. D. C. 571, 1328
v. Crumbaugh, 13 App. D. C. 553, 1804
v. Dempsey, 13 App. D. C. 533, 1337
v. Haller, 4 App. D. C. 405, 1317
v. Lyon, 161 U. S. 200, 1306
v. Payne, 13 App. D. C. 500, 1334, 1799
v. Sullivan, 11 App. D. C. 533, 1325
v. Waggaman, 4 Mackey 328, 500
v. Washington &c. R. Co., 1 Mackey 361, 1183
v. Woodbury, 136 U. S. 450, 817, 1594
District Tp. &c. v. District Tp. &c., 11 Iowa 506, 240
v. Hardenbrook, 40 Iowa 130, 1483
v. Rankin, 70 Iowa 65, 662
v. Thomas, 59 Iowa 50, 624
Dively v. City of Cedar Falls, 21 Iowa 565, 1417
v. City of Cedar Falls, 27 Iowa 227, 891
Diveny v. City of Elmira, 51 N. Y. 506, 812, 826, 1417, 1587
Dix v. School Dist., 22 Vt. 309, 362
v. Town of Dummerstown, 19 Vt. 262, 662
Dixon v. City of Cincinnati, 14 Ohio 240, 1419
v. City of Detroit, 86 Mich. 516, 1287
v. City of New York, 63 N. Y. S. 794, 744, 745
Dixon Co. v. Field, 111 U. S. 83, 634, 636, 885, 998, 999, 1000, 1002, 1006, 1008, 1009
Doane v. Houghton, 75 Cal. 360, 1259
v. Lake St. El. R. Co., 165 Ill. 510, 1706
Doctor v. Hartman, 74 Ind. 221, 697
Dodd v. City of Hartford, 25 Conn. 232, 1718, 1722
Dodds v. Henry, 9 Mass. 262, 351
Dodge v. City of Memphis, 51 Fed. 165, 978, 984
v. Com'rs &c., 3 Met. 380, 706
v. Gallatin, 130 N. Y. 117, 1426
v. Gridley, 10 Ohio 173, 106
v. People, 113 Ill. 491, 447
v. Platt Co., 82 N. Y. 218, 1010
v. Van Buren Circuit Judge, 118 Mich. 189, 1707
Dodson v. City of Cincinnati, 34 Ohio St. 276, 680
v. Mayor &c., 33 Ark. 508, 399, 400
Doe v. Deavors, 11 Ga. 79, 1714
v. Jones, 11 Ala. 63, 1559
v. McQuilkin, 8 Blackf. 335, 1540
Doering v. State, 49 Ind. 56, 1433
Doggett v. Cook, 11 Cush. 262, 335
Doherty v. Buchanan, 173 Mass. 338, 171
v. City of Galveston, 19 Tex. Civ. App. 708, 297
Dolan v. Joint School Dist., 80 Wis. 155, 1480
v. Mayor &c., 68 N. Y. 274, 197, 198, 212, 1258, 1445
Dolese v. McDougall, 182 Ill. 486, 1145
v. McDougall, 79 Ill. App. 629, 1145
v. Pierce, 124 Ill. 140, 385, 396
Doll v. Devery, 57 N. Y. S. 767, 579
Dollar Sav. Bank v. Ridge, 79 Mo. App. 26, 1174, 1295
v. United States, 19 Wall. 239, 1734
Dolliver v. Parks, 136 Mass. 499, 198
Dolloff v. Inhabitants &c., 162 Mass. 569, 713
Donaghy v. Macy, 167 Mass. 178, 201
Donahew v. City of Kansas City, 136 Mo. 657, 796, 1377, 1801
Donahoe v. Richards, 38 Maine 279, 221, 222, 1495
Donahue v. Graham, 61 Cal. 276, 109
v. Will Co., 100 Ill. 94, 1711
Donaldson v. Butler Co., 98 Mo. 163, 1740
v. City of Boston, 82 Mass. 508, 1592
Donley v. City of Pittsburg, 147 Pa. St. 348, 1160
Donnelly v. City of Brooklyn, 7 N. Y. 49, 934
v. City of Brooklyn, 121 N. Y. 9, 931
v. City of New York, 65 N. Y. S. 1030, 1768
v. Decker, 58 Wis. 461, 1084
v. Town of Ossining, 18 Hun 352, 870
v. Tripp, 12 R. I. 97, 818
Donnersberger v. Prendergast, 128 Ill. 229, 396
Donough v. Dewey, 82 Mich. 309, 66, 69, 196, 273, 276, 1473
Donovan v. City of Oswego, 59 N. Y. S. 759, 931, 1756
v. Mayor &c., 29 Miss. 247, 532
v. Mayor &c., 44 Barb. 180, 894
v. Mayor &c., 33 N. Y. 291, 210, 252, 233, 253, 645
v. McAlpin, 85 N. Y. 185, 225
v. Partridge, 69 N. H. 88, 223
v. President &c., 1 Pin. 81, 412
Doolan v. City of Manitowoc, 48 Wis. 312, 174

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Dooley v. Muse, 31 Neb. 424, 1473
v. Town of Sullivan, 112 Ind. 451, 820, 1190
Doolittle v. County Ct., 28 W. Va. 258, 1651
v. Selectmen &c., 59 Conn. 402, 1681
v. Walpole, 67 N. H. 554, 266
Doon Tp. v. Cummins, 142 U. S. 366, 890, 992, 993, 998
Doran v. Barnes, 54 Kan. 238, 1702
v. City of Camden, 46 Atl. 724, 1406
Dorchester v. Youngman, 60 N. H. 385, 472
Dore v. City of Milwaukee, 42 Wis. 108, 1224
Doremus v. People, 161 Ill. 26, 1237, 1289
Dorey v. City of Boston, 146 Mass. 336, 285
Dorgan v. City of Boston, 12 Allen 223, 687, 1177, 1231
Dorman v. City Council &c., 81 Maine 411, 695, 696, 1572
v. City of Jacksonville, 13 Fla. 538, 680, 1776
Dorn v. Backer, 61 N. Y. 261, 229
v. Backer, 61 Barb. 597, 1727
Dorrance St., Matter of, 4 R. I. 230, 1266
Dorsey v. City of Racine, 60 Wis. 292, 1622
v. Manlove, 14 Cal. 553, 1111
v. Smyth, 28 Cal. 21, 1445
Dorsey Co. v. Whitehead, 47 Ark. 205, 210, 957
Dosdall v. Olmsted, 30 Minn. 96, 9
Doster v. City of Atlanta, 72 Ga. 233, 805
v. Howe, 28 Kan. 353, 664
Dotterer v. Bowe, 84 Ga. 769, 1745
Dougan v. Champlain Trans. Co., 56 N. Y. 1, 1627
Dougherty v. Borough of Norwood, 196 Pa. St. 92, 721
v. Hitchcock, 35 Cal. 512, 1255
v. Miller, 36 Cal. 83, 708
v. Trustees &c., 159 N. Y. 154, 1364
Doughty v. Hope, 3 Denio 249, 348, 1533, 1540
Douglas v. Commonwealth, 2 Rawle 262, 1392
v. Commonwealth, 108 Pa. St. 559, 753
v. Craig, 4 Kan. App. 99, 1271
v. Downing, 9 So. 297, 968
v. Kansas City, 147 Mo. 428, 1388
v. Mayor &c., 18 Cal. 643, 570, 651
v. Pike Co., 101 U. S. 677, 1524
v. Town of Chatham, 41 Conn. 211, 983
v. Town of Harrisville, 9 W. Va. 162, 1287, 1520
Douglas Co. v. Bardon, 79 Wis. 641, 315
v. Timme, 32 Neb. 272, 173
Douglass v. Board &c., 23 Fla. 419, 274
v. City Council &c., 118 Ala. 599, 1705
v. Pike Co., 101 U. S. 677, 1001
v. State, 31 Ind. 429, 1445
v. Wickwire, 19 Conn. 489, 195
Douglasville v. Jones, 62 Ga. 423, 242
Dousman v. City of St. Paul, 22 Minn. 387, 1198
Dovaston v. Payne, 2 Sm. L. Cas. 142, 1559
Dover v. McMurphy, 4 N. H. 158, 158
v. Twombly, 42 N. H. 59, 326
Dow v. Bullock, 13 Gray 136, 168
v. Norris, 4 N. H. 16, 517
Dowell v. City of Portland, 13 Or. 248, 746
Dowlan v. Sibley Co., 36 Minn. 430, 14, 1200
Downend v. Kansas City, 156 Mo. 60, 1341, 1373, 1374
Downer v. Lent, 6 Cal. 94, 1091
Downing v. City of Miltonvale, 36 Kan. 740, 488, 538, 539
v. Herrick, 47 Maine 462, 221
v. Mason Co., 87 Ky. 208, 9
v. Rugar, 21 Wend. 178, 275, 295, 1485, 1539
Downs v. Board &c., 4 Wash. 309, 1737
v. City of Ansonia, 73 Conn. 33, 791
v. Commissioners &c., 2 Pen. 132, 86, 1359, 1360, 1787
Dows v. City of Chicago, 11 Wall. 108, 1697, 1717, 1718, 1722
v. City of Elmwood, 34 Fed. 114, 993
Dowty v. Pittwood, 23 Mont. 113, 186
Doxey v. Board &c., 67 Mich. 601, 626
Doyle v. City of Duluth, 74 Minn. 157, 931
v. Falconer, L. R. 1 P. C. 328, 205
Drainage Com'rs v. Illinois &c. R. Co., 158 Ill. 353, 1249
Drake v. City of Lowell, 13 Met. 292, 1592, 1612
v. Grout, 21 Ind. App. 534, 1272
v. Hudson River R. Co., 7 Barb. 508, 464, 1706
v. Inhabitants &c., 6 Cush. 393, 662
v. Phillips, 40 Ind. 388, 651, 1232
Dranga v. Rowe, 127 Cal. 506, 1550
Draper v. Cambridge, 20 Ind. 268, 1494
v. Town of Springport, 104 U. S. 501, 261, 1014, 1015
Drath v. Burlington &c. R. Co., 15 Neb. 367, 699
Dressman v. Farmers' &c. Bank, 100 Ky. 571, 1304
Drew v. Morrill, 62 N. H. 23, 191, 312
Drexel v. Town of Lake, 127 Ill. 54, 591
Dreyfus v. Lonergan, 73 Mo. App. 336, 506, 1685
Drhew v. City of Altoona, 121 Pa. St. 401, 897, 919
Driftwood &c. Co. v. Board &c., 72 Ind. 226, 234, 260, 647
Driggs v. Phillips, 103 N. Y. 77, 1105, 1559, 1573, 1574
Drisko v. Inhabitants &c., 75 Maine 73, 362
Dritt v. Snodgrass, 66 Mo. 286, 221, 222
Dronberger v. Reed, 11 Ind. 420, 698
Drott v. Riverside, 4 Ohio C. C. 312, 175
Drucker v. Manhattan R. Co., 106 N. Y. 157, 1581
Druiff v. Parker, L. R. 5 Eq. 131, 1015
Drullner v. State, 29 Ind. 308, 158
Drummond v. City of Eau Claire, 79 Wis. 97, 1255
Drury v. Foster, 2 Wall. 24, 310
Dryberry School Dist. v. Mercer, 115 Pa. St. 559, 1491
Dryden v. Swinburne, 20 W. Va. 89, 378
Dubach v. Hannibal &c. R. Co., 89 Mo. 483, 588, 1354
Dubois v. City Council &c., Dudley 30, 494
Du Bois v. Decker, 130 N. Y. 325, 1068
Dubuque &c. College v. District Tp. &c., 13 Iowa 555, 258, 715, 1480
Dudley v. Board &c., 80 Fed. 672, 998
v. Grayson, 6 T. B. Mon. 259, 1424
v. Mayhew, 3 N. Y. 9, 556
Duer v. Small, 4 Blatchf. 263, 1510
Duffield v. Williamsport School Dist., 162 Pa. St. 476, 1762
Duffy v. City of Dubuque, 63 Iowa 171, 1375, 1595, 1612
Dugan v. Farrier, 47 N. J. L. 383, 288, 296

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Dugan v. United States, 3 Wheat. 172, 217
Duggen v. McGruder, Walk. 112, 1724
Dugro, In re, 50 N. Y. 513, 1234
Duke v. Beeson, 79 Ind. 24, 1571
v. Brown, 96 N. C. 127, 370, 646
v. Mayor &c., 20 Ga. 635, 821, 822
Dullam v. Wilson, 52 Mich. 392, 207
Dullanty v. Town of Vaughn, 77 Wis. 38, 623
Dumas v. Patterson, 9 Ala. 484, 323, 327
Dunavon v. Board &c., 47 Hun 13, 1491
Dunbar v. Board &c., 49 Pac. 409, 873, 1707, 1731
Duncan v. Board &c., 101 Ind. 403, 285, 1038
v. City of Buffalo, 2 N. Y. S. 503, 1606
v. City of Lynchburg, 34 S. E. 964, 1805
v. City of Terre Haute, 85 Ind. 104, 693, 1571
v. Findlater, 6 Cl. & F. 894, 225
v. State, 7 La. An. 377, 326
Duncombe v. City of Fort Dodge, 38 Iowa 281, 261
v. Prindle, 12 Iowa 1, 446
Dundas v. City of Lansing, 75 Mich. 499, 1618, 1620, 1626, 1638
Dundy v. Board &c., 8 Neb. 508, 54, 56
Dunham v. City of New Britain, 55 Conn. 378, 1116
v. People, 96 Ill. 331, 1084
v. Trustees &c., 5 Cow. 462, 100, 499, 501, 505, 532, 1148, 1389
v. Village of Hyde Park, 75 Ill. 371, 684
v. Williams, 37 N. Y. 251, 1565
Dunleith &c. Bridge Co. v. City of Dunleith, 32 Iowa 427, 1518
Dunlop v. Keith, 1 Leigh 430, 530
v. Munroe, 7 Cranch 242, 225
Dunn v. Long Beach &c. Co., 114 Cal. 605, 1699
v. McNeely, 75 Mo. App. 217, 719
v. Town of Barnwell, 43 S. C. 398, 1376
Dunne v. W. Chicago Pk. Com'rs, 159 Ill. 60, 1237
Dunnell Mfg. Co. v. Newell, 15 R. I. 233, 1551, 1552
Dunning v. Railroad Co., 2 Ind. 437, 86, 87
Dunnovan v. Green, 57 Ill. 63, 1521
Duntley v. Davis, 42 Hun 229, 313
Duperier v. Viator, 35 La. An. 957, 1539
Dupont v. City of Pittsburg, 69 Fed. 13, 875
Durach's Appeal, 62 Pa. St. 491, 1503
Durant v. Eaton, 98 Mass. 469, 1722
v. Iowa Co., 1 Woolw. 69, 883, 1026
v. Kauffman, 34 Iowa 194, 1515, 1516, 1517
v. Palmer, 29 N. J. L. 544, 1597
Durfey v. Town of Worcester, 63 Vt. 418, 1051
Durham v. Hyde Park, 75 Ill. 371, 591
Durkee v. City of Janesville, 28 Wis. 464, 558
Durr v. Howard, 6 Ark. 461, 1411
Duryea v. Mayor &c., 26 Hun 120, 1790
v. Smith, 16 N. Y. S. 688, 1225
Dusenbury v. Mutual Tel. Co., 11 Abb. N. C. 440, 681, 1581
Dutten v. Village of Hanover, 42 Ohio St. 215, 340, 448
Dutton v. City of Aurora, 114 Ill. 138, 524, 848
Dwight v. Mayor, 12 Allen 322, 1501
Dwyer v. Hackworth, 57 Tex. 245, 562, 974
v. Salt Lake City, 19 Utah 521, 1330
Dyar v. Farmington Village Corporation, 70 Maine 515, 1178
Dyckman v. Mayor &c., 5 N. Y. 434, 684
Dyer v. Brogan, 70 Cal. 136, 1426
v. City of St. Paul, 27 Minn. 457, 801, 1215
v. Hydenfeldt, 4 West Coast Rep. 585, 1255
v. Smith, 12 Conn. 384, 220
Dyer Co. v. Railroad Co., 87 Tenn. 712, 1379
Dygert v. Schenck, 23 Wend. 446, 745
Dyker &c. Improvement Co. v. Cook, 38 N. Y. 222, 1247

E

Eachus v. Los Angeles &c. R. Co., 103 Cal. 614, 1211
Eadie v. Slimmon, 26 N. Y. 9, 1263
Eager, In re, 46 N. Y. 100, 1255
Eagle v. Beard, 33 Ark. 497, 434
Eagle Mfg. Co. v. City of Davenport, 101 Iowa 493, 1299
Eames v. Savage, 77 Maine 212, 142, 1526
Earles v. Wells, 94 Wis. 285, 877, 879
Earl of Excester v. Smith, 2 Keb. 367, 467
Earl of Exeter v. Smith, Cart. 177, 467
Early v. Hamilton, 75 Ind. 376, 696
East Hartford v. Hartford Bridge Company, 10 How. 511, 767
East Kingston v. Towle, 48 N. H. 57, 1571
East Missouri v. Horseman, 16 Up. Can. Q. B. 576, 211
East Oakland Tp. v. Skinner, 94 U. S. 255, 233, 636, 998
East 168th St., In re, 157 N. Y. 409, 1319
East 169th St., In re, 56 N. Y. S. 819, 1781
East River &c. Co. v. Donnelly, 93 N. Y. 557, 225, 753, 1687
East St. Louis v. Albrecht, 150 Ill. 506, 1235
v. Amy, 120 U. S. 600, 109, 1525
v. Board of Trustees, 6 Ill. App. 130, 897, 898
v. East St. Louis Gas &c. Co., 98 Ill. 415, 239
v. People, 6 Ill. App. 76, 897
v. United States, 110 U. S. 321, 1524, 1528, 1529
East Syracuse, In re, 20 Abb. N. C. 131, 927, 1199
East Tenn. Tel. Co. v. City of Russellville, 21 Ky. L. 305, 586
East Tenn. University v. Knoxville, 6 Baxt. 166, 10
Easterly v. Town of Irwin, 99 Iowa 694, 792
Eastman v. Amoskeag Mfg. Co., 44 N. H. 146, 1095
v. Concord, 64 N. H. 263, 936
v. Meredith, 36 N. H. 284, 9, 15, 36, 89, 148, 776, 786, 803, 807 810, 820, 830, 1076, 1113
Easton v. Colander, 11 Wend. 90, 1727
Easton &c. R. Co. v. City of Easton, 133 Pa. St. 505, 1122
Eaton v. Berlin, 49 N. H. 219, 869
v. Boston &c. R. Co., 51 N. H. 504, 676, 677
v. Chesebrough, 82 Mich. 214, 1544
v. Miner, 5 N. H. 542, 345
v. Supervisors &c., 44 Wis. 489, 13, 14
Eberhardt v. Wood, 6 Lea 467, 312
Eberhart v. Chicago &c. R. Co., 70 Ill. 347, 1602
Eby v. Board &c., 87 Cal. 166, 1682

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Eckert v. Long Island R. Co., 43 N. Y. 502, 1631
Eckman v. Brady Tp., 81 Mich. 70, 1059
Economides v. Hinricks, 48 La. An. 370, 605
Ecorse Tp. Board &c. v. Board &c., 75 Mich. 264, 1580
Ecroyd v. Coggeshall, 21 R. I. 1, 727
Eddy v. Board &c., 10 Phila. 94, 1119
v. Granger, 19 R. I. 105, 1315
v. Village of Ellicottville, 54 N. Y. S. 800, 804
v. Wilson, 43 Vt. 362, 355, 356, 360, 366, 666
Ede v. Cuneo, 55 Pac. 388, 1287
v. Cuneo, 126 Cal. 167, 1310
Edgar v. Greer, 14 Iowa 211, 1711
Edgecumbe v. City of Burlington, 46 Vt. 218, 689
Edgerly v. Concord, 62 N. H. 8, 266, 786, 787, 803, 820
Edgerton v. First Municipality &c., 1 La. An. 435, 1743
v. Goldsboro Water Co., 126 N. C. 93, 1507
v. Huff, 26 Ind. 35, 675
v. Mayor &c., 19 Fla. 140, 1269
Edinburg American Land Co. v. City of Mitchell, 1 S. D. 593, 850, 959, 968
Edminson v. City of Abilene, 7 Kan. App. 305, 465, 1021
Edmunds v. Banbury, 28 Iowa 267, 370
v. City of Boston, 108 Mass. 535, 701, 703, 1182
v. Gookins, 20 Ind. 477, 383, 1517
v. Gookins, 24 Ind. 169, 392
Edmundson v. School Dist., 98 Iowa 639, 876
Edward C. Jones Co. v. Perry, 26 Ind. App. 554, 1309
Edwards v. Berlin, 123 Cal. 544, 748, 1153, 1290
v. City of Chicago, 140 Ill. 440, 1174, 1258
v. City of Watertown, 24 Hun 426, 285
v. Common Council &c., 102 Mich. 153, 1327
v. Davis, 16 Johns. 682, 1069
v. Ferguson, 73 Mo. 686, 221
v. Kearzly, 96 U. S. 595, 412, 766
v. Town of Pocahontas, 47 Fed. 268, 806, 813
v. Trustees &c., 30 Ill. App. 528, 1487
v. United States, 13 Otto 471, 199
v. Williamson, 70 Ala. 145, 412
Eels v. American &c. Tel. Co., 20 N. Y. S. 600, 1581
Effingham &c. Co. v. Hamilton, 68 Miss. 523, 1646
Egan v. City of Chicago, 5 Ill. App. 70, 465
Ege v. Koontz, 3 Pa. St. 109, 242
Eggleston v. President &c., 18 Hun 146, 1612
Egleston v. City Council, 1 Mill Const. 45, 1411
Egyptian Levee Co. v. Hardin, 27 Mo. 495, 1205, 1206, 1270, 1292, 1508, 1521
Ehrgott v. Mayor &c., 96 N. Y. 264, 265, 783, 788, 1592
E. H. Rollins & Sons v. Board &c., 80 Fed. 692, 49 U. S. App. 399, 986, 1031
Eichels v. Evansville &c. R. Co., 78 Ind. 261, 103, 108, 586, 590
Eldam v. Finnegan, 48 Minn. 53, 1713
Eilert v. City of Oshkosh, 14 Wis. 637, 1255
Ela v. Smith, 5 Gray 121, 189, 191
Elbin v. Wilson, 33 Md. 135, 221
Elder v. Bemis, 2 Met. 599, 335
v. Cassilly, 21 Ky. L. 1274, 1243
v. Dwight Mfg. Co., 4 Gray 201, 1412
v. Territory, 3 Wash. T. 438, 1486, 1496
Electric Power Co. v. Mayor &c., 60 N. Y. S. 590, 573
Eleventh Ave., Matter of, 81 N. Y. 436, 1564
Elias v. City of Rochester, 61 N. Y. S. 712, 1361
Elk v. Wilkins, 112 U. S. 94, 135
Elliot v. City of Minneapolis, 59 Minn. 111, 752
Elliott v. City of Louisville, 101 Ky. 262, 490, 1389
v. City of Oil City, 129 Pa. St. 570, 1180
v. City of Philadelphia, 75 Pa. St. 347, 798
v. City of Pittsburgh, 6 Pa. Dist. R. 455, 753
v. Fair Haven &c. R. Co., 32 Conn. 579, 590
v. Palmer, 10 Pa. Co. Ct. 427, 1419
v. Sackett, 108 U. S. 132, 1015
v. Supervisors, 58 Mich. 452, 859, 1088
v. Swartwout, 10 Pet. 137, 1725
v. Williamson, 11 Lea 38, 1541
v. Willis, 1 Allen 461, 195
Ellis v. Academy &c., 120 Pa. St. 608, 1565
v. City of Cleburne, 35 S. W. 495, 714, 734
v. City of Lewiston, 89 Maine 60, 1342
v. City of Peru, 23 Ill. App. 35, 1631
v. County Com'rs, 2 Gray 370, 1657
v. Northern Pac. R. Co., 77 Wis. 114, 622
v. Page, 1 Pick. 43, 523
v. Sheffield Gas &c. Co., 23 L. J. Q. B. 42, 745
v. Washoe Co., 7 Neb. 291, 663, 664
Ellison v. Alderman, 89 N. C. 125, 204
v. Allen, 30 N. Y. S. 441, 1369
v. Linford, 7 Utah 166, 1515
Elmendorf v. Mayor &c., 25 Wend. 693, 167, 299, 477, 480, 1421
Elmore v. Drainage Com'rs, 135 Ill. 269, 267, 772, 780
v. Overton, 104 Ind. 548, 220, 222
Elmore Co. v. Long, 52 Ala. 277, 1527
Elmwood Tp. v. Marcy, 92 U. S. 289, 992, 1001, 1005
El Paso Gas &c. Co. v. City of El Paso, 22 Tex. Civ. App. 309, 723
Elrod v. Bernadotte, 53 Ill. 368, 1530
Elsberry v. Seay, 83 Ala. 614, 1494, 1495
Elson v. O'Dowd, 40 Ind. 300, 656
Elster v. Springfield, 49 Ohio St. 82, 582, 809, 1181
Elston v. Board &c., 20 Ind. 272, 383, 1517
Elwell v. Tucker, 1 Blackf. 285, 757
Elwood v. Bullock, 6 Q. B. 383, 500, 1405
Ely v. Board &c., 36 N. Y. 297, 800
v. Campbell, 59 How. Pr. 333, 620, 1610
v. City of Des Moines, 86 Iowa 55, 1638
v. City of Rochester, 26 Barb. 133, 666
v. Parsons, 55 Conn. 83, 225, 226
v. St. Louis R. Co., 77 Mo. 34, 1627

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Elyton Land Co. v. Ayres, 67 Ala. 413, 651, 1287
Embler v. Town of Walkill, 132 N. Y. 222, 1632
Embury v. Conner, 3 N. Y. 511, 675
Emeric v. Gilman, 10 Cal. 404, 1743
Emerich v. City of Indianapolis, 118 Ind. 279, 1677
Emerson v. Babcock, 66 Iowa 258, 1368
v. Inhabitants &c., 13 Pick. 377, 715
Emery v. Bradford, 29 Cal. 75, 708
v. City of Lowell, 127 Mass. 138, 246
v. Hapgood, 7 Gray 55, 211
v. San Francisco Gas Co., 28 Cal. 345, 1256, 1266, 1269
Emlen v. Lehigh Coal &c. Co., 47 Pa. St. 76, 1020
Emmitt v. City of New York, 13 N. Y. S. 887, 178, 188
Emmons v. City of Lewiston, 132 Ill. 380, 1395
Emory v. City of Lowell, 104 Mass. 13, 817
Empire v. Darlington, 101 U. S. 87, 995, 1026
Empire City Subway Co. v. Broadway &c. R. Co., 159 N. Y. 555, 740
Enfield v. Jordan, 119 U. S. 680, 1026, 1033
Enfield Toll Bridge Co. v. Hartford &c. R. Co., 17 Conn. 40, 1323
Engle v. New York, 40 Fed. 51, 784
English v. Chicot Co., 26 Ala. 454, 982
v. Mayor &c., 2 Marv. 63, 1242, 1292, 1302
v. People, 96 Ill. 566, 624, 979
v. Smock, 34 Ind. 115, 656
English &c. Inv. Co. v. Hardy, 93 Tex. 289, 1644
Engstad v. Dinnie, 8 N. D. 1, 925, 1549
Engstrom v. City of Minneapolis, 28 Minn. 200, 1366
Enos v. City of Springfield, 113 Ill. 65, 1143, 1158, 1166, 1167, 1268, 1303
Enright v. Falvey, 4 L. R. Ir. 397, 321
Ensign v. Barse, 107 N. Y. 329, 1166, 1505
Episcopal School, Matter of, 75 N. Y. 324, 1139
Episcopal Society v. Dedham Episcopal Church, 1 Pick. 372, 258
Erie v. Bootz, 72 Pa. St. 196, 106
Erie City v. Schwingle, 22 Pa. St. 384, 265
Erie Co. v. City of Erie, 113 Pa. St. 360, 1546
Erlinger v. Boneau, 51 Ill. 94, 58
Ernst v. Kunkle, 5 Ohio St. 520, 1192
Erschler v. Lennox, 42 N. Y. S. 805, 1550
Erskine v. Steel Co., 87 Fed. 630, 992
v. Van Arsdale, 15 Wall. (82 U. S.) 75, 1551, 1552, 1726
Erving v. Mayor, 131 N. Y. 133, 753
Erwin v. Central Union Tel. Co., 148 Ind. 365, 1700
v. City of Jersey City, 60 N. J. L. 141, 479
Escanaba &c. Co. v. City of Chicago, 107 U. S. 678, 801
Eschbach v. Pitts, 6 Md. 71, 1262, 1544
Eslava v. Jones, 83 Ala. 139, 222
Espy v. Town of Ft. Madison, 14 Iowa 226, 1725
Essex Public Road Board v. Skinkle, 140 U. S. 334, 768
Essex Turnpike Corp. v. Collins, 8 Mass. 292, 304
Essroger v. City of Chicago, 185 Ill. 420, 512
Estep v. Keokuk Co., 18 Iowa 199, 251, 647
Estes v. Owen, 90 Mo. 113, 589, 1233
Estey v. Starr, 56 Vt. 690, 301, 356
Estopinal v. Peyroux, 37 La. An. 477, 335
Eureka City v. Wilson, 15 Utah 67, 520, 1384, 1390
Eureka Springs v. O'Neal, 56 Ark. 350, 520
Eustace v. Jahns, 38 Cal. 3, 1588
Eustis v. City of Henrietta, 37 S. W. 632, 66
Evanisch v. G. C. & S. F. R. Co., 57 Tex. 123, 794
Evans v. City of Council Bluffs, 65 Iowa 238, 421, 1516
v. City of Denver, 26 Colo. 193, 1290
v. City of Utica, 69 N. Y. 166, 1587, 1631
v. Etheridge, 96 N. C. 42, 223
v. Hughes Co., 6 Dak. 102, 596
v. People, 139 Ill. 552, 1241
v. Sharp, 29 Wis. 564, 558
v. Town of Stanton, 23 Minn. 368, 865
Evanston v. Gunn, 99 U. S. 660, 8, 265, 1324
Evansville v. Dennett, 161 U. S. 434, 609
Evansville &c. Co. v. State, 73 Ind. 219, 1571
Evansville &c. R. Co. v. City of Evansville, 15 Ind. 395, 282
Eve v. Simon, 78 Ga. 120, 1677
Everett v. City of Council Bluffs, 46 Iowa 66, 1117
v. Deal, 148 Ind. 90, 306, 1711
v. Smith, 22 Minn. 53, 374, 473
Evergreen Cemetery Ass'n v. Beecher, 53 Conn. 551, 689
v. City of New Haven, 43 Conn. 234, 680
Everill v. Swan, 17 Utah 514, 152
Everson v. City of Syracuse, 100 N. Y. 577, 818
Everts v. District Tp. &c., 77 Iowa 37, 618, 1480, 1482
Evertson v. National Bank, 66 N. Y. 14, 1019
v. Sutton, 5 Wend. 280, 335
Ewart v. Village of Western Springs, 180 Ill. 318, 1144, 1148, 1310
Ewbanks v. President &c., 36 Ill. 177, 527, 528, 1132, 1419
Ewing v. State, 81 Tex. 172, 1689
Exchange Bank v. Hines, 3 Ohio St. 1, 1721
v. Lewis Co., 28 W. Va. 273, 216
Exeter v. Glyde, 4 Mod. 33, 207
v. Starre, 2 Show. 158, 536
Eyerly v. Board &c., 81 Iowa 189, 1674
v. Jasper Co., 72 Iowa 150, 1674
v. Jasper Co., 77 Iowa 470, 1674
Eyerman v. Blaksley, 78 Mo. 145, 526, 1499
Eyke v. Lange, 90 Mich. 592, 1656
Eyre v. Jacob, 14 Gratt. 422, 1508, 1521

F

Faake v. City of Seattle, 16 Wash. 90, 1325
Face v. City of Ionia, 90 Mich. 104, 1557, 1593
Facey v. Fuller, 13 Mich. 527, 297
Fagan v. City of Chicago, 84 Ill. 227, 1268, 1272
Fair v. City of Philadelphia, 88 Pa. St. 309, 1378
Fairbanks Co. v. Kirk, 12 Pa. Super. Ct. 210, 1744
Fairchild v. City of St. Louis, 97 Mo. 85, 1697

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Fairchild v. City of St. Paul, 46 Minn. 540, 1168
v. Keith, 29 Ohio St. 156, 334
v. Wall, 93 Cal. 401, 1194
Fairfax v. Hunter, 7 Cranch 603, 132, 134
Fairfield v. Gallatin Co., 100 U. S. 47, 995, 996
Falconer v. Buffalo &c. R. Co., 69 N. Y. 491, 990, 996
v. Campbell, 2 McLean 195, 45
v. Shores, 37 Ark. 386, 313
Falk v. Strother, 84 Cal. 544, 939, 1664
Falkner v. Hunt, 16 Cal. 170, 1725
Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, 551, 1302
Faller v. City of Grand Rapids, 105 Mich. 529, 825
Fallon, In re, 59 N. Y. S. 849, 873
Fall River Works v. City of Fall River, 110 Mass. 428, 701
Falls v. Cairo, 58 Ill. 403, 246, 247
Fane's Case, 1 Doug. 149, 200
Fanning v. Gregoire, 16 How. 524, 261, 565
Farley v. Board &c., 126 Ind. 468, 1419
v. Chicago &c. R. Co., 36 Ill. App. 517, 906
v. Mayor &c., 41 N. Y. S. 622, 1363, 1364
Farmers' &c. Bank v. School Dist., 6 Dak. 255, 627, 851
Farmers' Loan &c. Co. v. Borough of Ansonia, 61 Conn. 76, 1250
v. City of Galesburg, 133 U. S. 156, 746, 1028
Farmington River &c. Co. v. County Com'rs, 112 Mass. 206, 706, 707, 1724
Farnham v. Benedict, 39 Hun 22, 212
v. Pierce, 141 Mass. 203, 1071
Farnsworth v. City of Rockland, 83 Maine 508, 1583
v. Pawtucket, 13 R. I. 83, 526
Farnum v. Town of Concord, 2 N. H. 392, 148, 777
v. Town of Ellington, 46 Hun 41, 1591
Farquar v. City of Roseberg, 18 Or. 271, 265
Farr v. Brackett, 30 Vt. 344, 523
v. Hollis, 9 B. & C. 315, 318
v. West Chicago Park Com'rs, 167 Ill. 355, 1310
Farraker v. City of Keokuk, 111 Iowa 310, 1141
Farrar v. City of St. Louis, 80 Mo. 379, 1183, 1206, 1233, 1257
Farrel v. Mayor &c., 12 Up. Can. Q. B. 343, 536
v. Town of Derby, 58 Conn. 234, 671, 857
Farrell v. City of Bridgeport, 45 Conn. 91, 1432
v. King, 41 Conn. 448, 1427
v. Mayor &c., 5 N. Y. S. 672, 620, 1370
v. West Chicago Park Com'rs, 182 Ill. 250, 1136, 1149, 1270, 1287
Farrington v. City of Mt. Vernon, 64 N. Y. S. 863, 519, 1274
v. New England &c. Co., 1 N. D. 102, 593
v. Turner, 53 Mich. 27, 372
Farwell v. City of Chicago, 71 Ill. 269, 604
Fass v. Seehawer, 60 Wis. 525, 559, 708, 1163
Fath v. Koeppel, 72 Wis. 289, 1090
Fatout v. Board &c., 102 Ind. 223, 1476
Faulk v. McCartney, 42 Kan. 695, 849, 1491
Faulkner v. City of Aurora, 85 Ind. 130, 774, 820
Faveill v. Eastern &c. R. Co., 2 Exch. 344, 662
Favrot v. Parish of East Baton Rouge, 34 La. An. 491, 1529
Fay v. City of Springfield, 94 Fed. 409, 1297, 1505
v. Reed, 128 Cal. 357, 1153, 1154
Fayssoux v. De Chaurand, 36 La. An. 547, 1255
Fechelmer v. City of Louisville, 84 Ky. 306, 1537
Federgreen v. Town of Fallsburgh, 25 Hun 152, 870
Fee v. Columbus Borough, 168 Pa. St. 382, 1335
Feeley v. Wurster, 54 N. Y. S. 1060, 218, 1732
Fehler v. Gosnell, 99 Ky. 380, 18 Ky. L. 238, 712, 1298
Felten v. City of Milwaukee, 47 Wis. 494, 700, 701
Felch v. Gilman, 22 Vt. 38, 1570
v. Town of Weare, 69 N. H. 617, 266
Feldman v. City Council &c., 23 S. C. 57, 979, 1542
Felker v. City of New Whatcom, 16 Wash. 178, 1141, 1294
Fell v. State, 42 Md. 71, 467
Fellowes v. City of New Haven, 44 Conn. 240, 680
Fellows v. Gilman, 4 Wend. 414, 309, 311
v. Walker, 39 Fed. 651, 981
Felton v. Short Route &c. Co., 85 Ky. 640, 1575
Fender v. Neosho Falls Tp., 22 Kan. 305, 1519
Fenelon's Petition, 7 Pa. St. 173, 1266
Fenton v. Salt Lake Co., 4 Utah 466, 934
Fenwick v. East London R. Co., L. R. 20 Eq. 544, 1448
Ferdinand v. Mayor &c., 59 Hun 623, 1193
Fergus Falls Water Co. v. City of Fergus Falls, 65 Fed. 586, 726
Ferguson v. City of Selma, 43 Ala. 398, 1115, 1118, 1382
v. Columbus &c. R. Co., 75 Ga. 637, 794
v. Crittenden Co., 6 Ark. 479, 291
v. Earl of Kinnoull, 9 U. & F. 251, 222
v. Landram, 5 Bush 230, 650
Fernald v. Lewis, 6 Maine 264, 142, 342, 965
Fernbach v. City of Waterloo, 76 Iowa 598, 1628, 1641
Ferrari v. Board &c., 24 Fla. 390, 1101
Ferree v. School Dist., 76 Pa. St. 376, 675
Ferrier, In re, 103 Ill. 367, 1071
Ferris v. City of Chicago, 162 Ill. 111, 1237
Ferron v. Alloway, 14 Bush 580, 1252
Fertilizing Co. v. Hyde Park, 97 U. S. 659, 1464
Feusier v. Lammon, 6 Nev. 209, 331
Fidelity &c. Co. v. City of Louisville, 174 U. S. 429, 192
v. Lawrence Co., 92 Fed. 576, 610
Field v. Barling, 149 Ill. 556, 1316, 1703
v. City of Des Moines, 39 Iowa 575, 673, 802, 1122
v. City of Shawnee, 7 Okla. 73, 740
v. Commonwealth, 32 Pa. St. 478, 200, 213
v. Field, 9 Wend. 394, 373

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Field v. Girard College, 54 Pa. St. 233, 200
v. Inhabitants &c., 36 N. J. Eq. 118, 790, 1216
v. Malsten, 88 Md. 691, 194, 209, 541
v. Mayor &c., 6 N. Y. 179, 1191
v. People, 3 Ill. 79, 151
v. Village of Western Springs, 181 Ill. 186, 514, 1703
Fields v. Stokley, 99 Pa. St. 306, 802, 1121
Fife v. City of Oshkosh, 89 Wis. 540, 1344, 1375
Fifield v. Marinette Co., 62 Wis. 532, 593, 1204
Fifth Ave., In re, 36 N. Y. S. 141, 1280
Fifty-fourth St., In re, 165 Pa. St. 8, 1243
Filbert v. City of Philadelphia, 181 Pa. St. 530, 717
Finch v. Board &c., 30 Ohio St. 37, 9, 225, 780
Findlay v. McAllister, 113 U. S. 104, 1526
Fink v. City of St. Louis, 71 Mo. 52, 1608
v. Village of Milwaukee, 17 Wis. 26, 1419
Finley v. City of Philadelphia, 32 Pa. St. 381, 1499, 1500
v. Dietrick, 12 Iowa 516, 1517
Finn v. City of Adrian, 93 Mich. 504, 1638
Finney v. City of Oshkosh, 18 Wis. 209, 1254
v. State, 126 Ind. 577, 912, 1483
Fire Department &c. v. Davies, 25 Misc. 683, 88
v. Helfenstein, 16 Wis. 136, 137
v. Kip, 10 Wend. 267, 61, 83
v. Noble, 3 E. D. Smith 441, 137
Fire Extinguisher Mfg. Co. v. City of Perry, 8 Okla. 429, 728
Fire Ins. Patrol v. Boyd, 120 Pa. St. 624, 797
Fireman's Ins. Co., Ex parte, 6 Hill 243, 1674
First Baptist Church Soc. v. Railroad Co., 5 Barb. 79, 1109
First Municipality v. Blineau, 3 La. An. 688, 503, 1110, 1121
v. Commissioners of Sinking Fund, 1 Rob. 279, 92
v. Cutting, 4 La. An. 335, 464, 517, 580, 1402
v. McDonough, 2 Rob. 244, 977
v. Orleans Theatre Co., 2 Rob. 209, 992
First Nat'l Bank v. Arthur, 12 Colo. App. 90, 956, 1688
v. City of Ottawa, 43 Kan. 294, 1744
v. Cook, 77 Ill. 622, 1717
v. Keith, 84 Ill. App. 103, 525
v. Keith, 183 Ill. 475, 722, 926
v. Mayor &c., 68 Ga. 119, 1551
v. Meredith, 44 Mo. 500, 1511
v. Peck, 43 Kan. 643, 910
v. Rush School Dist., 81½ Pa. St. 307, 863
v. Saratoga Co., 106 N. Y. 488, 963
v. Sarlls, 129 Ind. 201, 575, 1391, 1707
v. Scott, 14 Minn. 77, 1027
v. Town of Arlington, 16 Blatchf. 57, 1014
v. Town of Concord, 50 Vt. 257, 987
v. Town of Dorset, 16 Blatchf. 62, 987
First Nat'l Bank v. Union School Tp., 75 Ind. 361, 862
v. Watkins, 21 Mich. 483, 1551
v. Yankton Co., 101 U. S. 129, 992
First Presbyterian Church v. City of Ft. Wayne, 36 Ind. 338, 1232
First St., Matter of, 66 Mich. 42, 637, 1323
Fish v. Dodge, 38 Barb. 163, 222
v. Perkins, 52 Conn. 200, 1054
Fishburn v. City of Chicago, 171 Ill. 338, 734
Fisher v. Board &c., 44 La. An. 184, 850
v. Bountiful City, 21 Utah 29, 610
v. City of Boston, 104 Mass. 87, 263, 797, 803, 807, 820, 1096
v. City of Mt. Vernon, 58 N. Y. S. 499, 1360
v. City of Portland, 24 Or. 188, 1306
v. City of St. Louis, 44 Mo. 482, 1306
v. Deans, 107 Mass. 118, 334, 335
v. Harrisburg, 2 Grant Cas. 291, 500, 506, 526, 1084, 1406
v. Inhabitants &c., 4 Cush. 494, 644
v. McGirr, 1 Gray 1, 519
v. Municipal Council &c., 10 Up. Can. Q. B. 492, 1256
v. People, 84 Ill. 491, 1533
v. People, 157 Ill. 85, 1283, 1289
v. Prowse, 2 B. & S. 770, 1561
v. Village of Cambridge, 133 N. Y. 527, 1581, 1642
Fisk v. City of Hartford, 69 Conn. 375, 1710
v. City of Kenosha, 26 Wis. 23, 982
v. Hazard, 7 R. I. 438, 668
v. Jefferson &c. Jury, 116 U. S. 131, 1525
Fiske, Ex parte, 72 Cal. 125, 1392
Fitch v. Board &c., 122 Cal. 285, 194
v. Mayor &c., 40 Hun 512, 188
v. McDiarmid, 26 Ark. 482, 1652
v. Pinckard, 5 Ill. 76, 86, 87, 540, 1254, 1423
Fitchburg R. Co. v. Grand Junction &c. R. Co., 1 Allen 552, 195
Fitzgerald v. City of Troy, 7 N. Y. S. 103, 1616
v. Commonwealth, 5 Allen 509, 1072
v. Inhabitants &c., 109 Mass. 204, 1586, 1606, 1626
v. Walker, 55 Ark. 148, 855
Fitzhugh v. City of Bay City, 109 Mich. 581, 1286
Fitzpatrick v. Board &c., 87 Ky. 132, 1486
Fitzsimmons v. City of Brooklyn, 102 N. Y. 536, 213, 1445
Flack v. Green Island Village, 122 N. Y. 107, 1558, 1559
v. Harrington, 1 Ill. 213, 335
Flagg v. Inhabitants &c., 142 Mass. 280, 1601
v. Mayor &c., 33 Mo. 440, 1015
v. Palmyra, 33 Mo. 440, 1527
v. Parish of St. Charles, 27 La. An. 319, 651
v. Worcester, 13 Gray 601, 1216
Flatan v. State, 56 Tex. 93, 314
Flatcher v. Boodle, 18 C. B. 152, 128
Fleckner v. President &c., 8 Wheat. 338, 260, 261
Fleming v. City of Appleton, 55 Wis. 90, 942
v. City of Springfield, 154 Mass. 520, 1616, 1620, 1621
v. Dyer, 20 Ky. L. 689, 1685

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Flemming v. Clerk &c., 30 N. J. L. 280, 1428
Fletcher v. Auburn &c. R. Co., 25 Wend. 462, 1603
v. City of Ellsworth, 53 Kan. 751, 1375
v. City of Lowell, 15 Gray 103, 189
v. City of Oshkosh, 18 Wis. 229, 1254
v. Collins, 111 Ga. 253, 192
v. Inhabitants &c., 20 Maine 439, 340, 341, 346, 1485
v. Inhabitants &c., 77 Maine 334, 1041
v. Peck, 6 Cranch 87, 771
Flewellin v. Proetzel, 80 Tex. 191, 1232, 1254, 1255
Flint v. Webb, 25 Minn. 93, 1234
Flood v. Atlantic City, 63 N. J. L. 530, 513
v. State, 19 Tex. App. 584, 494
Flora v. Sachs, 64 Ind. 155, 530
Floral Springs W. Co. v. Rives, 14 Nev. 431, 1736
Flori v. St. Louis, 69 Mo. 341, 9, 142
Flournoy v. City of Jeffersonville, 17 Ind. 169, 223, 697
Floyd v. Atlanta Banking Co., 109 Ga. 778, 726
v. Barker, 12 Coke 23, 220
v. Commissioners &c., 14 Ga. 354, 535, 541, 1414
v. Gilbreath, 27 Ark. 675, 1717, 1724
Floyd Acceptances, 7 Wall 666, 977, 1028
Fluty v. School Dist., 49 Ark. 94, 618
Flynn v. Canton Co., 40 Md. 312, 1588
v. City of Boston, 153 Mass. 372, 417
v. Hurd, 118 N. Y. 19, 1579
v. Inhabitants &c., 173 Mass. 108, 1331
v. Little Falls &c. Co., 74 Minn. 180, 109, 734, 735, 1700
v. Taylor, 127 N. Y. 596, 1582
Fobes v. Rome &c. R. Co., 121 N. Y. 505, 1582
Fogg v. Dummer, 58 N. H. 505, 869
v. Inhabitants &c., 98 Mass. 578, 818, 1332
Foland v. Town of Frankton, 142 Ind. 546, 725, 926
Foley v. City of Haverhill, 144 Mass. 352, 1264
v. City of Troy, 45 Hun 396, 1604, 1607
v. East Flamborough Tp., 29 Ont. 139, 1332
v. Tyler, 161 Ill. 167, 381
Folsom v. Apple River L. D. Co., 41 Wis. 602, 1218
v. School Directors, 91 Ill. 402, 864
v. Town of Underhill, 36 Vt. 580, 1374
v. Township &c., 159 U. S. 611, 1033
Folts Street &c., In re, 46 N. Y. St. 43, 1129, 1164
Foltz v. Kerlin, 105 Ind. 221, 185, 198
Fones Hardware Co. v. Erb, 54 Ark. 645, 919
Foot v. County Court &c., 1 McCrary 218, 1524
v. Prowse, 1 Str. 625, 166
v. Stiles, 57 N. Y. 399, 311, 697
Foote v. American Product Co., 195 Pa. St. 190, 1326
v. Board &c., 67 Miss. 156, 1647
v. Brown, 60 Miss. 155, 843
v. City of Cincinnati, 11 Ohio 408, 61, 82, 117, 118
Foote v. Linck, 5 McLean 616, 1721
v. Pike Co., 101 U. S. 688, 1001
v. Town of Hancock, 15 Blatchf. 343, 1027
Fopper v. Town of Wheatland, 59 Wis. 623, 1623
Forbes v. Appleton, 5 Cush. 115, 1263, 1725
v. Board &c., 28 Fla. 26, 1101
v. Mayor &c., 1 Marv. 186, 518
Force v. Town of Batavia, 61 Ill. 99, 368, 985
Forcey v. Caldwell, 9 Atl. 466, 217
Ford v. Booker, 53 Ind. 395, 521
v. Chicago &c. R. Co., 14 Wis. 609, 685
v. City of New York, 56 N. Y. S. 4, 208
v. Clough, 8 Maine 334, 347, 361, 866
v. McGregor, 20 Nev. 446, 229, 230
v. New York &c. R. Co., 53 N. Y. S. 764, 549
v. Parker, 4 Ohio St. 576, 225
v. School Dist., 121 Pa. St. 543, 1474
v. Standard Oil Co., 53 N. Y. S. 48, 504
v. Thralkill, 84 Ga. 169, 594, 608, 1392
v. Town of North Des Moines, 80 Iowa 626, 57, 392, 397, 400, 1518
v. Umatilla Co., 15 Or. 313, 1641
Foreman v. Town of Marianna, 43 Ark. 324, 400
Forest Co. v. Langlade Co., 76 Wis. 605, 423, 424, 436, 444
Forker v. Borough of Sandy Lake, 130 Pa. St. 123, 1638, 1639
Forks Tp. v. King, 84 Pa. St. 230, 1633
Forshay v. Ferguson, 5 Hill 154, 1263
Forsyth v. Dunnagan, 94 Cal. 438, 1561
v. Krueter, 100 Ind. 27, 1258
v. Mayor &c., 45 Ga. 152, 821
Forsythe v. City of Hammond, 142 Ind. 505, 63
v. Ellis, 4 J. J. Marsh. 298, 332
Fortin v. Inhabitants, 145 Mass. 196, 1617
Fort Plain Bridge Co. v. Smith, 30 N. Y. 44, 568
Fort Smith v. Dodson, 46 Ark. 296, 533
Fort Worth v. Crawford, 64 Tex. 202, 804
Fort Worth City Co. v. Smith Bridge Co., 151 U. S. 294, 1306
Fortune v. City of St. Louis, 11 Mo. 59, 1745
Foshay v. Town of Glen Haven, 25 Wis. 288, 1612
Foss v. City of Chicago, 56 Ill. 354, 509, 510, 550, 1142
v. Crisp, 20 Pick. 121, 134
Fossett v. Bearce, 29 Maine 523, 347, 348
Foster v. Board &c., 102 Cal. 483, 499
v. City of Cape May, 60 N. J. L. 78, 550, 731, 747
v. City of Kenosha, 12 Wis. 616, 548
v. City of Wilmington, 8 Houst. 415, 173
v. Clinton Co., 51 Iowa 541, 775
v. Coleman, 10 Cal. 278, 638
v. Fowler, 60 Pa. St. 27, 4, 5, 1530
v. Lane, 30 N. H. 305, 12
v. Lookout &c. Water Co., 3 Lea 42, 786
v. Scarff, 15 Ohio St. 532, 349, 368
Fourth School Dist. v. Wood, 13 Mass. 193, 7

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Fowle v. Common Council &c., 3 Pet. 398, 9, 92, 822, 1388
Fowler v. Atkinson, 6 Minn. 578, 216
v. Bebee, 9 Mass. 231, 197, 1420
v. Perkins, 77 Ill. 271, 1668
Fox, Appeal of, 73 Conn. 68, 1279
v. City of Bay City, 122 Mich. 499, 737
v. City of Fostoria, 60 Ohio St. 340, 91
v. City of New Orleans, 12 La. An. 154, 254
v. City of Richmond, 19 Ky. L. 326, 713, 792
v. Drake, 8 Cowen 191, 215
v. Ellison, 43 Minn. 41, 1416
v. Middleborough Town Co., 16 Ky. L. 455, 1286
v. Ohio, 5 How. 410, 607
v. Shipman, 19 Mich. 218, 861
v. Sloo, 10 La. An. 11, 710
v. Village of Fort Edward, 48 Hun 363, 87
Foxworthy v. City of Hastings, 25 Neb. 133, 1596, 1608
Frace v. City of Tacoma, 16 Wash. 69, 1549
Fractional School Dist. v. Board of Inspectors, 63 Mich. 611, 1486
v. Malary, 23 Mich. 111, 861
Frame v. Felix, 167 Pa. St. 47, 753
Francis v. Howard Co., 50 Fed. 44, 839, 892
v. Schoellkopf, 53 N. Y. 152, 1112
Frank v. Steamship &c. Co., 20 La. An. 25, 1111
Franke v. Paducah &c. Co., 88 Ky. 467, 282, 1458
Frankel v. City of New York, 2 N. Y. 294, 1608
Frankfort v. Inhabitants &c., 54 Maine 250, 672
Franklin v. Cromwell, Dal. 95, 467
v. House, 104 Tenn. 1, 1333
v. Westfall, 27 Kan. 614, 523
Franklin Bank v. Cooper, 36 Maine 179, 321
Franklin Bridge Co. v. Wood, 14 Ga. 80, 45
Franklin Co. v. Henry Co., 26 Ill. App. 193, 1042, 1052
v. Layman, 34 Ill. App. 606, 840
Franklin Co. Com'rs v. Lathrop, 9 Kan. 453, 629
Franklin County Court v. Deposit Bank, 87 Ky. 370, 1545
Franklin Tp. v. Lebanon Tp., 51 N. J. L. 93, 1045
Franklin Wharf Co. v. City of Portland, 67 Maine 46, 817, 1106
Frantz v. Jacob, 88 Ky. 525, 839
Fraser v. Lewiston, 76 Maine 531, 148
Frasher v. Rader, 124 Cal. 132, 1712
Frazier v. Butler Borough, 172 Pa. St. 407, 1335
Frederick v. City Council &c., 5 Ga. 561, 992, 1542
v. Douglas Co., 96 Wis. 411, 1731
v. People, 83 Ill. App. 89, 192, 714
Freeholders &c. v. Strader, 18 N. J. L. 108, 8
Freeman v. Davis, 7 Mass. 200, 311
v. Howe, 24 How. 450, 331
v. Otis, 9 Mass. 260, 216, 218
Freemont v. Boling, 11 Cal. 380, 1288
Freemont Bldg. Ass'n v. Sherwin, 6 Neb. 48, 981
Freeport v. Isbell, 83 Ill. 440, 264
Freeport St. R. Co. v. City of Freeport, 151 Ill. 451, 1248, 1250, 1286
Freeport Water-works Co. v. Prager, 129 Pa. St. 605, 1453
Freetown v. County Com'rs, 9 Pick. 46, 706
Fremont &c. R. Co. v. Brown Co., 18 Neb. 516, 429
v. Whalen, 11 Neb. 585, 701
French v. Benton, 44 N. H. 28, 1053
v. Burlington, 42 Iowa 614, 883
v. City of Boston, 129 Mass. 592, 263, 814
v. City of Burlington, 42 Iowa 614, 876, 881
v. Common Council &c., 85 Mich. 135, 1676
v. Inhabitants &c., 3 Allen 9, 666
v. Spalding, 61 N. H. 395, 346
v. Teschemaker, 24 Cal. 518, 982
Frenchtown Tp. v. Board &c., 89 Mich. 204, 1580
Frenner v. Sunnyside Land Co., 124 Cal. 437, 1309
Frey v. Michie, 68 Mich. 323, 1695
Frick v. Brinkley, 61 Ark. 397, 732
v. City of Los Angeles, 115 Cal. 512, 736
v. City of Milwaukee, 17 Wis. 26, 536
Friend v. City of Pittsburg, 131 Pa. St. 305, 931
v. Hamill, 34 Md. 298, 221
Friesner v. Common Council &c., 91 Mich. 504, 555
Frith v. City of Dubuque, 45 Iowa 406, 264
Fritsch v. City of Allegheny, 91 Pa. St. 226, 1613
Frommer v. City of Richmond, 31 Gratt. 646, 1520
Frorer v. People, 141 Ill. 171, 734
Frosh v. City of Galveston, 73 Tex. 401, 1255
Frost v. Beekman, 1 Johns. 285, 228
v. City of Casselton, 8 N. D. 534, 928, 929
v. City of Chicago, 178 Ill. 250, 503
v. Inhabitants &c., 6 Allen 152, 651, 672
v. Leatherman, 55 Mich. 33, 1255
v. Mayor &c., 5 El. & B. 531, 1657
v. Slick, 1 Dak. 131, 1717
Fry v. Albemarle Co., 86 Va. 195, 774, 775
Fuchs v. City of St. Louis, 133 Mo. 168, 793
Fuhrman v. Mayor &c., 54 Ala. 263, 535
Fullam v. Inhabitants &c., 9 Allen 1, 262
Fuller v. City of Atlanta, 66 Ga. 80, 680
v. City of Chicago, 89 Ill. 282, 882
v. Colfax Co., 33 Neb. 716, 933
v. Hampton, 5 Conn. 416, 142
v. Heath, 89 Ill. 296, 844, 845, 898, 1132, 1133
v. Inhabitants &c., 11 Gray 340, 362, 667, 668
v. Mayor &c., 82 Mich. 480, 1341
v. Morrison Co., 36 Minn. 309, 1522, 1531
v. Mower, 81 Maine 380, 966
Fullerton v. Spring, 3 Wis. 667, 524
Fulliam v. City of Muscatine, 70 Iowa 436, 1634
Fullilove v. Police Jury &c., 51 La. An. 359, 1543
Fulton v. City of Davenport, 17 Iowa 404, 1517
v. City of Lincoln, 9 Neb. 358, 260, 1255
v. Cummings, 132 Ind. 453, 554
v. Short Route R. &c. Co., 85 Ky. 640, 1213
Fulton St., In re, 29 How. Pr. 429, 1158

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Fulweiler v. City of St. Louis, 61 Mo. 479, 1417
Furman v. Nichol, 8 Wall. 44, 89
Furman St., In re, 17 Wend. 649, 1222

G

Gachet v. McCall, 50 Ala. 307, 1551
Gaddis v. Richland Co., 92 Ill. 119, 982, 985
Gaffney v. Gough, 36 Cal. 104, 1262
Gagan v. City of Janesville, 106 Wis. 662, 1366
Gage v. City of Chicago, 162 Ill. 313, 1146
v. City of Chicago, 178 Ill. 530, 1154
v. City of Hornellsville, 106 N. Y. 667, 936
v. Currier, 4 Pick. 399, 230
v. Dudley, 64 N. H. 437, 1542
v. Evans, 90 Ill. 569, 1287
v. Graham, 57 Ill. 144, 1531, 1721
Gage Co. v. Fulton, 16 Neb. 5, 1041
Galatian v. Gardner, 7 Johns. 106, 1567
Galbraith v. Lettlech, 73 Ill. 209, 1425
Galbreath v. Newton, 30 Mo. App. 380, 1259
Gale v. Inhabitants &c., 51 Maine 174, 669
v. Village of Kalamazoo, 23 Mich. 344, 282, 568, 618, 637, 642, 1389, 1403
Galena &c. R. Co. v. Appleby, 28 Ill. 283, 1105
Galesburg v. Hawkinson, 75 Ill. 152, 11, 385
v. Searles, 114 Ill. 217, 1268
Gall v. City of Philadelphia, 18 Ohio St. 563, 1403
Gallagher v. City of St. Paul, 28 Fed. 305, 1609
v. Keating, 57 N. Y. S. 632, 1731
v. Partridge, 69 N. H. 88, 223
Gallaher v. Smith, 55 Mo. App. 116, 551
Galloway v. Corbitt, 52 Mich. 460, 1724
Gallup v. Tracy, 25 Conn. 10, 295
v. Woodstock, 29 Vt. 347, 684
Galt v. City of Chicago, 174 Ill. 605, 522, 1294
Galveston City Co. v. City of Galveston, 56 Tex. 486, 245
Galveston Gas Co. v. Galveston Co., 54 Tex. 287, 1552
Galveston &c. R. Co. v. Harris, 36 S. W. 776, 488
v. White, 32 S. W. 186, 1362
Galveston Wharf Co. v. City of Galveston, 63 Tex. 14, 1546
Galway v. Metropolitan El. R. Co., 128 N. Y. 132, 1582
Gamble v. Marion Co., 85 Iowa 675, 943
Gamewell Fire Alarm &c. Co. v. City of Laporte, 96 Fed. 664, 744, 873
v. City of Laporte, 102 Fed. 417, 736, 744, 745
v. Mayor &c., 31 Fed. 312, 938
Gandy v. Chicago &c. R. Co., 30 Iowa 420, 1109
Gans v. City of Philadelphia, 102 Pa. St. 97, 1124
Gardiner &c. v. Inhabitants &c., 5 Maine 133, 1500, 1510
Gardner, Matter of, 68 N. Y. 467, 1657
v. City of New Berne, 98 N. C. 228, 901
v. Haney, 86 Ind. 17, 992, 1012, 1529
v. People, 20 Ill. 430, 1400
v. State, 21 N. J. L. 557, 1510
v. Trustees &c., 2 Johns. Ch. 162, 674, 688, 691
Garfield v. Douglass, 22 Ill. 100, 221
Gargan v. Louisville &c. R. Co., 89 Ky. 212, 1213, 1575
Garland v. City of Denver, 11 Colo. 534, 538
v. Jackson, 7 La. An. 68, 1480
Garlinghouse v. Jacobs, 29 N. Y. 297, 224
Garnett v. City of Slater, 56 Mo. App. 207, 1341, 1373
Garrard v. Davis, 53 Mo. 322, 228
Garrard Co. Court v. Bayle Co. Court, 10 Bush 208, 1576
Garrett v. City of St. Louis, 25 Mo. 505, 1206, 1269
v. State, 49 N. J. L. 693, 1111
Garrison v. City of New York, 21 Wall. 196, 767
Garside v. City of Cohoes, 12 N. Y. S. 192, 160
Garvey, Petition of, 77 N. Y. 523, 1234
Garvie v. City of Hartford, 54 Conn. 440, 179
Garvin v. Daussman, 114 Ind. 429, 1239
v. Wells, 8 Iowa 286, 85, 538
Garza, Ex parte, 28 Tex. App. 381, 1388
Gas Co. v. Parkersburg, 30 W. Va. 435, 568, 1394, 1463, 1464
Gas &c. Co. v. Borough of Dowrington, 175 Pa. St. 341, 572
Gas L. Co. v. Memphis, 93 Tenn. 612, 746
Gashwiler v. Willis, 33 Cal. 11, 1212
Gaskill v. Dudley, 6 Met. 546, 142, 342, 965, 1526
Gastenau v. Commonwealth, 56 S. W. 705, 1385
Gaston v. Babcock, 6 Wis. 503, 423
Gatch v. City of Des Moines, 63 Iowa 718, 1239
Gates v. Delaware Co., 12 Iowa 405, 199, 200
v. Hancock, 45 N. H. 528, 260
v. School Dist., 53 Ark. 468, 853
Gatlin v. Town of Tarboro, 78 N. C. 119, 1508, 1521
Gaughan v. City of Philadelphia, 119 Pa. St. 503, 1596
Gause v. City of Clarkesville, 5 Dill. 165, 636, 637, 838, 974, 1022
Gaussen v. United States, 97 U. S. 584, 318, 319
Gavett v. City of Jackson, 109 Mich. 415, 1325
Gay v. Bradstreet, 49 Maine 580, 1321
v. City of Cambridge, 128 Mass. 387, 1622
G. C. R. Co. v. G. C. S. R. Co., 63 Tex. 529, 1352
Gear v. Dubuque &c. R. Co., 20 Iowa 523, 700
Gearhart v. Dixon, 1 Pa. St. 224, 1255, 1423, 1425, 1540
Geer v. Board &c., 97 Fed. 435, 998
v. School Dist. &c., 97 Fed. 732, 1006
Geist's Appeal, 104 Pa. St. 351, 1192
Gelpcke v. City of Dubuque, 1 Wall. 175, 764, 983, 1013, 1016, 1018, 1020, 1524
Gemmil v. Arthur, 125 Ind. 258, 944
Genesee &c. Bank v. Board &c., 53 Barb. 223, 1724
Genesee Tp. v. McDonald, 98 Pa. St. 444, 278, 1480
Genet v. City of Brooklyn, 99 N. Y. 296, 1199
Geneva v. Cole, 61 Ill. 397, 65
Genois v. Lockett, 13 La. 545, 192
Genovese v. Mayor &c., 55 N. Y. Super. Ct. 397, 1212
Gentle v. Board &c., 73 Mich. 40, 1486
George v. Dean, 47 Tex. 73, 1719

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

George v. Inhabitants &c., 6 Met. 497, 344, 345, 355, 356, 360, 1485
v. Oxford Township, 16 Kan. 72, 988, 1027
v. Wyandotte &c. Light Co., 105 Mich. 1, 733
George F. Blake Mfg. Co. v. Sanitary Dist. &c., 77 Ill. App. 287, 742, 748
George's Creek &c. Co. v. County Com'rs, 59 Md. 255, 1552
v. New Central &c. Co., 40 Md. 425, 693
Georgia v. Atkins, 35 Ga. 315, 770
v. Stanton, 6 Wall. 50, 17
Georgia R. &c. Co. v. Smith, 128 U. S. 174, 1379
Georgia State Bank and Loan Ass'n v. Owens, 88 Ga. 224, 1415
Gerald v. City of Boston, 108 Mass. 580, 1638
Gerber v. Ackley, 32 Wis. 233, 331
Gerberling v. Wunenberg, 51 Iowa 125, 1561
Gerdes v. Christopher &c. Co., 124 Mo. 347, 1361
Gere v. Supervisors &c., 7 How. Pr. 255, 1054
Gerhard v. Seekonk &c. Com'rs, 15 R. I. 334, 1317
Gerken v. Sibley Co., 39 Minn. 433, 904
Gerlach v. Brandreth, 54 N. Y. S. 479, 1700
Germaine v. City of Muskegon, 105 Mich. 213, 1328
German American Bank v. City of Brenham, 35 Fed. 185, 974
German American Sav. Bank v. City of Spokane, 17 Wash. 315, 1296
German Ins. Co. v. City of Manning, 78 Fed. 900, 1007
v. City of Manning, 95 Fed. 597, 519, 878, 973, 1031
v. City of Minden, 51 Neb. 870, 513
German Sav. Bank v. Franklin Co., 128 U. S. 526, 100, 990, 1002
Germania Bank v. City of St. Paul, 79 Minn. 29, 1307, 1553
Gerrard v. Omaha &c. R. Co., 14 Neb. 270, 693
Gerrish v. Brown, 51 Maine 256, 817
Getchell v. Benton, 30 Neb. 870, 981
v. Inhabitants &c., 55 Maine 433, 355
Getzoff v. City of New York, 64 N. Y. S. 636, 1340
Ghee v. Northern Union Gas Co., 158 N. Y. 510, 1349
Gibbon v. District of Columbia, 116 U. S. 404, 1502
Gibbons v. Mobile R. Co., 36 Ala. 410, 983
v. United States, 8 Wall. 269, 771
Gibbs v. Commissioners, 19 Pick. 298, 1724
v. Consolidated Gas Co., 130 U. S. 396, 104
Giboney v. City of Cape Girardeau, 58 Mo. 141, 1516, 1517
Gibson v. Bailey, 9 N. H. 168, 345, 347, 367, 1427
v. Kayser, 16 Mo. App. 404, 1233
v. Mason, 5 Nev. 283, 151
v. Wood, 20 Ky. L. 1547, 186
Giffen v. City of Lewiston (Idaho), 55 Pac. 545, 930, 1327, 1331, 1338, 1358
Gifford v. New Jersey &c. R. Co., 10 N. J. Eq. 171, 651
v. Town of White Plaines, 25 Hun 606, 870
Gilbert v. Board &c., 45 Kan. 31, 316, 913
Gilbert v. Hebard, 8 Met. 129, 1743
v. Luce, 11 Barb. 91, 199
Gilchrist v. Little Rock, 1 Dill. 261, 1017
v. Schmidling, 12 Kan. 263, 533
Gilder v. City of Brenham, 67 Tex. 345, 1374
Gildersleeve v. Board of Education, 17 Abb. Pr. 201, 273, 305
Giles v. City of Shenandoah, 111 Iowa 83, 1367
v. School Dist., 31 N. H. 304, 12, 341, 1485
Gilham v. President &c., 2 Scam. 245, 378
v. Wells, 64 Ga. 192, 500, 598
Gilkey v. City of Merrill, 67 Wis. 459, 652
v. Town of How, 105 Wis. 41, 70
Gill v. Brown, 12 Johns. 385, 216
v. City of Oakland, 124 Cal. 335, 1241, 1304
Gillan v. Hutchinson, 16 Cal. 153, 705
Gillespie v. McGowan, 100 Pa. St. 144, 795, 810
Gillett v. Board &c., 67 Ill. 256, 285
v. McGonigal, 80 Wis. 158, 1568
Gillette v. City of Denver, 21 Fed. 822, 1239, 1242, 1270
v. City of Hartford, 31 Conn. 351, 386, 1513, 1516
Gilliam Co. v. Wasco Co., 14 Or. 525, 444
Gillmore v. Lewis, 12 Ohio 281, 671
Gilluly v. City of Madison, 63 Wis. 518, 265, 517, 811
Gilman v. City of Philadelphia, 3 Wall. 713, 801, 1576
v. City of Sheboygan, 2 Black 510, 1520, 1531, 1547
v. Contra Costa Co., 8 Cal. 52, 1743
v. Inhabitants &c., 15 Gray 577, 1635
v. Laconia, 55 N. H. 130, 8, 265
v. School Dist., 18 N. H. 215, 958
v. Gilby Tp., 8 N. D. 627, 951
Gilmanton v. Sanbornton, 56 N. H. 336, 1058
Gilmer v. Hunnicutt, 57 S. C. 166, 1686
v. Lime Point, 19 Cal. 47, 695
Gilmore v. American &c. Ins. Co., 67 Cal. 366, 1713
v. City of Utica, 131 N. Y. 26, 278, 284, 1143, 1200, 1201, 1260
v. Hentig, 33 Kan. 156, 1146, 1153
v. Holt, 4 Pick. 258, 348
v. Morton, 10 Kan. 491, 55
Gilpatrick v. City of Biddeford, 86 Maine 534, 789
Gilpin v. City of Ansonia, 68 Conn. 72, 71
Gilroy v. School Dist., 17 Or. 522, 1491
Gilson v. Board &c., 128 Ind. 65, 1659
Gimbel v. Stolte, 59 Ind. 446, 693, 1571
Giovanni, The, v. City of Philadelphia, 59 Fed. 303, 795, 1333
Girard v. City of New Orleans, 2 La. An. 898, 563
v. Philadelphia, 7 Wall. 1, 90, 92, 103, 383, 396, 459, 564, 1517
Girvin v. Simon, 116 Cal. 604, 1280
v. Simon, 127 Cal. 491, 1237, 1279
Glaessner v. Anheuser-Busch Brewing Ass'n, 100 Mo. 508, 590
Glasgow v. City of St. Louis, 107 Mo. 198, 801, 829, 1317, 1320, 1574, 1697
v. Rowse, 43 Mo. 479, 1508, 1520, 1521
Glasier v. Town of Hebron, 131 N. Y. 447, 816, 1587
Glass v. Ashbury, 49 Cal. 571, 554

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Gleason v. Barnett, 20 Ky. L. 1694, 1147, 1281
v. Barnett, 20 Ky. L. 1865, 476
v. City of Boston, 144 Mass. 25, 1058
v. Peerless Mfg. Co., 37 N. Y. S. 267, 482, 499
v. Sloper, 24 Pick. 181, 706
v. Waukesha Co., 103 Wis. 225, 1141, 1549
Glenn v. Wray, 126 N. C. 730, 984, 993
Glidden v. Town of Reading, 38 Vt. 52, 1639
Globe &c. Mills v. Bilbrough, 19 N. Y. S. 176, 1412
Glover v. City of Terre Haute, 129 Ind. 593, 391, 395
Goddard, Petitioner, 16 Pick. 504, 1168, 1177, 1178, 1198
v. City of Boston, 20 Pick. 407, 106
v. Inhabitants &c., 84 Maine 499, 788
Goddin v. Crump, 8 Leigh 120, 609, 983
Goeltz v. Town of Ashland, 75 Wis. 642, 1597
Goetcheus v. Matthewson, 61 N. Y. 420, 221
Goetler v. State, 45 Ark. 454, 1388
Goettman v. Mayor &c., 6 Hun 132, 199
Goetzman v. Whittaker, 81 Iowa 527, 945
Goforth v. Rutherford &c. Co., 96 N. C. 535, 989
Going v. Dinwiddie, 86 Cal. 633, 221
Goins v. City of Moberly, 127 Mo. 116, 1316
Gold v. City of Peoria, 65 Ill. App. 602, 880
Goldman v. Conway Co., 10 Fed. 888, 959
Goldschmid v. Mayor &c., 43 N. Y. S. 447, 796
Goldsmid v. Tunbridge Wells Com'rs, L. R. 1 Eq. 161, 809
Goldsmith v. Board &c., 115 Cal. 36, 1744
v. Mayor &c., 120 Ala. 182, 524
Goldthwaite v. City Council &c., 50 Ala. 486, 537
Gooch v. Association &c., 109 Mass. 558, 807
v. Gregory, 65 N. C. 142, 1530
Goodale v. Brocknor, 61 How. Pr. 451, 1066
v. Fennell, 27 Ohio St. 426, 1531
v. Lawrence, 88 N. Y. 513, 1063
Goodel v. Baker, 8 Cowen 286, 352
Goodenow v. Buttrick, 7 Mass. 140, 523
Goodfellow v. City of New York, 100 N. Y. 15, 826
Goodhue v. Town of Beloit, 21 Wis. 636, 409
Goodin v. Cincinnati &c. Canal Co., 18 Ohio St. 169, 703, 1222
Goodman v. Simonds, 20 How. 343, 1018, 1032
Goodnow v. Board &c., 11 Minn. 31, 941, 973
Goodrich v. Brown, 30 Iowa 291, 85, 537, 1411
v. City of Detroit, 123 Mich. 559, 1300
v. City of Waterville, 88 Maine 39, 730
v. Winchester &c., 26 Ind. 119, 1269
Goodtitle v. Alker, 1 Burr. 133, 676
Goodwillie v. City of Lake View, 137 Ill. 51, 1283, 1292
Goodwin v. Roberts, L. R. 1 App. Cas. 476, 1018
v. State, 142 Ind. 117, 208
Goodyear v. School Dist., 17 Or. 517, 1491
Goose River Bank v. Willow Lake School Tp., 1 N. D. 26, 647, 968, 1487, 1491
Gordon v. Appeal Tax Court, 3 How. 133, 1511
v. City of Richmond, 83 Va. 436, 1594, 1631, 1632, 1635
v. Clifford, 28 N. H. 402, 349
v. Comes, 47 N. Y. 608, 1253, 1514, 1538
v. Mayor &c., 5 Gill 231, 1511
Gorgier v. Mieville, 3 B. & C. 45, 1018
Gorham v. Gross, 125 Mass. 232, 811
v. Springfield, 21 Maine 58, 58, 61
Goring v. McTaggart, 92 Ind. 200, 617, 1288, 1722
Gorman v. Sinking Fund Com'rs, 25 Fed. 641, 1020
Gorley v. City of Louisville, 20 Ky. L. 602, 184
Gormley v. Day, 114 Ill. 185, 522, 1648
Gorton v. Erie R. Co., 45 N. Y. 660, 1641
Goshen v. Myers, 119 Ind. 196, 1578, 1579
Goshen Trustees &c. v. Springfield &c. R. Co., 12 Ohio St. 624, 1023
Gosling v. Voley, 12 Q. B. 328, 100, 161, 162, 293, 373, 378, 463, 500
Gosselink v. Campbell, 4 Iowa 296, 533, 1085
Gossigi v. City of New Orleans, 41 La. An. 522, 1403
Goswell v. City of Louisville, 57 S. W. 476, 719
Goszler v. Corporation of Georgetown, 6 Wheat. 593, 579, 587, 824
Gottschalk v. Becher, 32 Neb. 653, 394, 397
Gougle v. Dorsey, 27 Wis. 119, 423
Gould v. City of Paris, 68 Tex. 511, 893
v. City of Rochester, 105 N. Y. 46, 1095
v. City of Topeka, 32 Kan. 485, 1584
v. Glass, 19 Barb. 179, 198
v. Sterling, 23 N. Y. 439, 982, 985, 1010, 1539
Gouldey v. City Council &c., 63 N. J. L. 537, 1710
Gove v. Epping, 41 N. H. 539, 668
Governor v. Allen, 8 Humph. 176, 312
v. Dodd, 81 Ill. 162, 223
v. Gibson, 14 Ala. 326, 322
v. Hancock, 2 Ala. 728, 331
v. McEwen, 5 Humph. 241, 456
v. Meredith, 4 T. R. 794, 801
v. Perrine, 23 Ala. 807, 328, 333
v. Ridgeway, 12 Ill. 14, 318
v. Robbins, 7 Ala. 79, 323, 327
Govett v. City of Jackson, 109 Mich. 408, 1344
Gowen v. Philadelphia Exchange Co., 5 W. & S. 141, 1561
Goyne v. Ashley Co., 31 Ark. 552, 945
Grade Crossing Com'rs &c., In re, 64 N. Y. S. 1074, 1779
Grading of Shiloh Street, In re, 165 Pa. St. 386, 1152
Graf v. City of St. Louis, 8 Mo. App. 562, 694
Graff v. Mayor &c., 10 Md. 544, 699, 700, 1196
Graffty v. City of Rushville, 107 Ind. 502, 614, 1404
Grafton Bank v. Kimball, 20 N. H. 107, 366
Graham v. City of Greenville, 67 Texas 62, 58, 66, 395, 397, 1517
v. Hartnett, 10 Neb. 517, 1566
v. State, 1 Pike 171, 1410

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Gram v. Village of Greenbush, 3 N. Y. S. 76, 1604
Grand Ave. R. Co. v. People's R. Co., 132 Mo. 34, 1697
Grand Chute v. Winegar, 15 Wall. 355, 1001, 1031
Grand Gulf &c. R. Co. v. Buck, 53 Miss. 246, 1513
Grand Island Gas Co. v. West, 28 Neb. 852, 1467
Grand Lodge v. Waddill, 36 Ala. 313, 585
Grand Rapids v. Blakely, 40 Mich. 367, 242
v. Grand Rapids &c. R. Co., 58 Mich. 641, 694
Grand Rapids &c. Co. v. Grand Rapids &c. Co., 33 Fed. 659, 621, 1351
v. Jarvis, 30 Mich. 308, 677
Grand Rapids &c. R. Co. v. Alley, 34 Mich. 16, 693
v. Gray, 38 Mich. 461, 1411, 1415, 1417
v. Huntley, 38 Mich. 540, 1618
v. Sanders, 54 How. Pr. 214, 1019
v. West Side St. R. Co., 48 Mich. 433, 683
Granger v. Pulaski Co., 26 Ark. 37, 14
Granger Cases, 94 U. S. 155, 164, 5, 6
Grant v. Bartholomew, 58 Neb. 839, 1236, 1237
v. Board of Water Com'rs &c., 122 Mich. 694, 745
v. Camp, 105 Ga. 428, 549
v. City of Davenport, 36 Iowa 396, 651, 876, 877, 879, 889, 917
v. City of Erie, 69 Pa. St. 420, 264, 786, 820
v. Common Council &c., 91 Mich. 274, 1195, 1674
v. Courter, 24 Barb. 232, 763
v. Davenport, 36 Iowa 396, 1511
Grant Co. v. Lake Co., 17 Or. 453, 883
Grantland v. City of Memphis, 12 Fed. 287, 413
Gratton Tp. v. Chelton, 97 Fed. 145, 1006
Gravel Hill School Dist. v. Old Farm School Dist., 55 Conn. 244, 1474
Graves v. City of Bloomington, 17 Ill. App. 476, 1086
v. Colby, 9 Ad. & El. 356, 528
v. Jasper School Tp., 2 S. Dak. 414, 1486
v. Lebanon Nat'l Bank, 10 Bush 23, 320, 321
Gray v. Baynard, 5 Del. Ch. 499, 623
v. Board &c., 139 Mass. 328, 1182
v. City of Brooklyn, 2 Abb. App. Dec. 267, 90, 103
v. City of Brooklyn, 10 Abb. Pr. 186, 763, 829
v. City of Detroit, 113 Mich. 657, 792
v. Granger, 17 R. I. 201, 169
v. Mayor &c., 2 Marv. 257, 494
v. Mayor &c., 111 Ga. 361, 266, 792, 804
v. Richardson, 124 Cal. 460, 723, 733
v. Richardson, 55 Pac. 603, 1287
v. State, 2 Harr. 76, 1416
v. Town of Cicero, 177 Ill. 459, 1146, 1174, 1378
Grayham v. County Court &c., 9 Dana 184, 318
Grayson v. Latham, 84 Ala. 546, 957, 959, 962, 963
Great Falls Mfg. Co. v. Worster, 45 N. H. 110, 1055
Greeley v. City of Jacksonville, 17 Fla. 174, 106, 520
Green v. Burke, 23 Wend. 490, 198
Green v. City of Cape May, 41 N. J. L. 45, 464, 644, 1091
v. City of Indianapolis, 22 Ind. 192, 538
v. City of Indianapolis, 25 Ind. 490, 490, 1424
v. City of Springfield, 130 Ill. 515, 1259
v. City of Tacoma, 51 Fed. 622, 823
v. County Com'rs, 27 S. C. 9, 939, 947
v. Eden, 24 Ind. App. 583, 151
v. Harrison Co., 61 Iowa 311, 1076
v. Mayor &c., R. M. Charlt. 368, 1500, 1508
v. Mayor &c., 1 Burr. 127, 289, 296
v. Miller, 6 Johns. 39, 294
v. Rutherforth, 1 Ves. Sr. 462, 563
v. Shanklin, 24 Ind. App. 608, 718
v. State, 73 Cal. 29, 18
v. Town of Canaan, 29 Conn. 157, 1559
v. Town of Dyersburg, 2 Flip. 477, 984, 1017
v. Ward, 82 Va. 324, 1232, 1255, 1261, 1262
v. Wardwell, 17 Ill. 278, 309
Greenbanks v. Boutwell, 43 Vt. 207, 347, 353, 359, 666
Green Bay &c. Co. v. Kaukauna &c. Co., 70 Wis. 635, 666
v. Outagamie Co., 76 Wis. 588, 593
Greencastle Tp. v. Black, 5 Ind. 557, 401
Greene v. Damrell, 175 Mass. 394, 106
v. Mumford, 5 R. I. 472, 1717, 1718, 1722
Greene Co. v. Eubanks, 80 Ala. 204, 14
Greenfield v. Wilson, 13 Gray 384, 332
Greenley v. People, 60 Ill. 19, 666, 1084
Greenville Co. v. Runion, 9 S. C. 1, 915
Greenville Water-Works Co. v. City of Greenville, 7 So. 409, 571, 640, 1450
Greenwood v. Freight Co., 105 U. S. 13, 104, 510, 1184
v. Hassett, 61 Pac. 173, 1141, 1259
v. Louisville, 13 Bush 226, 264
v. Morrison, 128 Cal. 350, 752, 1294
v. State, 6 Baxt. 567, 607
Greer, In re, 56 N. Y. S. 938, 1379
v. Rowley, 1 Pittsb. 1, 1745
Gregg Tp. v. Jamison, 55 Pa. St. 468, 196
Gregory, Ex parte, 20 Tex. App. 210, 1397, 1406
v. Brooks, 37 Conn. 365, 222
v. Brown, 4 Bibb 28, 221
v. Burk, 35 Alb. L. J. 278, 1177
v. City of Bridgeport, 41 Conn. 76, 281, 285, 668
v. Mayor &c., 113 N. Y. 416, 176, 626
v. Small, 39 Ohio St. 346, 221, 222
Gregston v. City of Chicago, 145 Ill. 451, 1349
Grenada Co. Supervisors v. Brogden, 112 U. S. 261, 642, 643, 992
Grey v. Mayor &c., 58 N. J. Eq. 1, 1107
v. Mayor &c., 60 N. J. Eq. 385, 1710
Gribble v. City of Sioux City, 38 Iowa 390, 1635
Grider v. Tally, 77 Ala. 422, 222, 223
Gridley v. City of Bloomington, 68 Ill. 47, 1168, 1349, 1596
v. City of Bloomington, 88 Ill. 555, 1032, 1587
Grier v. Shackleford, 3 Brev. 491, 156
Griffin v. Mayor &c., 3 Bosw. 483, 1112
v. Mayor &c., 9 N. Y. 456, 263, 830, 1159
v. Rising, 11 Met. 339, 230

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Griffith v. Carter, 8 Kan. 565, 1500
v. Commissioners, 20 Ohio 609, 983
v. Sebastian Co., 49 Ark. 24, 1736
v. Watson, 19 Kan. 23, 1500
Griffith Co. v. City of Los Angeles, 54 Pac. 383, 738
Griggs v. St. Croix Co., 27 Fed. 333, 1489
Grim v. Weissenberg School Dist., 57 Pa. St. 433, 1551
Grimes v. Hamilton Co., 37 Iowa 290, 659, 660
Grimmell v. City of Des Moines, 57 Iowa 144, 1270
Grimmett v. Askew, 48 Ark. 151, 274
Grimsley v. State, 116 Ind. 130, 912
Grindley v. Barker, 1 Bos. & P. 229, 294
Griswold v. Brega, 160 Ill. 490, 1707
Groff v. City of Philadelphia, 150 Pa. St. 594, 1220
v. Mayor &c., 44 Md. 180, 104
Grogan v. Broadway Foundry Co., 87 Mo. 321, 1375
v. City of San Francisco, 18 Cal. 590, 43, 242, 630, 631, 757
v. City of Worcester, 140 Mass. 227, 1623
v. Town of Hayward, 4 Fed. 161, 1214
Grondin v. Logan, 88 Mich. 247, 1648
Gross v. City of Grossdale, 176 Ill. 572, 1294
v. City of Lampass, 74 Tex. 195, 1179
v. City of Portsmouth, 68 N. H. 266, 266, 789
Grove v. City of Ft. Wayne, 45 Ind. 429, 1115, 1612
Grover v. Huckins, 26 Mich. 476, 526, 533, 1085
v. Inhabitants, 11 Allen 88, 344, 362
Grumon v. Raymond, 1 Conn. 40, 335
Grundy Co. v. Hughes, 8 Ill. App. 34, 1064
Grusenmeyer v. City of Logansport, 76 Ind. 549, 1095, 1660
Gubasko v. City of New York, 1 N. Y. S. 215, 1615
Guenther v. Whiteacre, 24 Mich. 504, 335
Guerin v. Borough of Asbury Park, 57 N. J. L. 292, 605
Guernsey v. Burlington Tp., 4 Dillon 372, 981
Guerrero, In re, 69 Cal. 88, 1539
Guest v. City of Brooklyn, 69 N. Y. 506, 1202, 1719
v. Commissioners &c., 90 Md. 689, 790, 791
Guild v. City of Chicago, 82 Ill. 472, 90, 103
Guillotte v. City of New Orleans, 12 La. An. 432, 534
Guldin v. Schuylkill County, 48 Phila. Leg. Int. 197, 173
Gulf &c. R. Co. v. Gasscamp, 69 Tex. 545, 1631
Gulick v. New, 14 Ind. 93, 189, 379, 1418, 1672
Gullikson v. McDonald, 62 Minn. 278, 804, 805
Gulline v. City of Lowell, 144 Mass. 491, 1595
Gumotte v. Egelhoff, 2 Mo. App. 963, 1295
Gundling v. Chicago, 177 U. S. 183, 518
v. Chicago, 176 Ill. 340, 469, 604, 658, 1382, 1384, 1388
Gunn v. Barry, 15 Wall. 610, 996
v. Pulaski Co., 3 Ark. 427, 1527
Gunnison Co. v. E. H. Rollins & Sons, 173 U. S. 255, 1001, 1003, 1005, 1031, 1032
Gunter v. Fayetteville, 56 Ark. 202, 398, 400
Gurley v. City of New Orleans, 41 La. An. 75, 233, 235, 619
Gurnee v. Brunswick Co., 1 Hughes 270, 941
v. City of Chicago, 40 Ill. 165, 1233
Gurney v. Inhabitants &c., 93 Maine 360, 1336
Gusher v. City of New York, 56 N. Y. S. 1002, 710, 1707
v. City of New York, 58 N. Y. S. 967, 578
Gustin v. Inhabitants &c., 10 Gray 259, 1533
Guthrie v. Armstrong, 5 B. & Ald. 628, 295
v. City of Philadelphia, 73 Fed. 688, 795
v. Swan, 3 Okl. 116, 1330
Guthrie Nat'l Bank v. City of Guthrie, 173 U. S. 528, 69
Gwynn v. Turner, 18 Iowa 1, 229
Gwynne v. Burnell, 7 Cl. & F. 572, 325
v. Pool, Lutw. 290, 220

H

Haaren v. High, 97 Cal. 445, 1166, 1505
Hackensack Water Co. v. Mayor &c., 51 N. J. L. 220, 1448, 1449
Hackett v. Ottawa, 99 U. S. 86, 979, 980, 1001, 1004
Hackstack v. Keshena Imp. Co., 66 Wis. 439, 1218
Hackworth v. Louisville &c. Stone Co., 20 Ky. L. 1789, 1166, 1505
Haddox v. Clarke Co., 79 Va. 677, 368
Hadley v. Citizens' Sav. Inst., 123 Mass. 301, 1573
v. State, 66 Ind. 271, 1483
Hadsel v. Inhabitants &c., 3 Gray 526, 667
Hafford v. City of New Bedford, 16 Gray 297, 263, 797, 803, 807, 820, 1097
Hagan v. City of Brooklyn, 126 N. Y. 643, 172, 184
Hagar v. Board &c., 47 Cal. 222, 1714
v. Brainard, 44 Vt. 294, 693, 1571
v. Reclamation Dist., 111 U. S. 701, 559, 694, 1238, 1239, 1302, 1714
Hager v. City of Burlington, 42 Iowa 661, 1258
Haggard v. Hawkins, 14 Ind. 299, 419
Hagner v. Heyberger, 7 W. & S. 104, 297
Hagood v. Southern, 117 U. S. 52, 18
Hague v. City of Philadelphia, 48 Pa. St. 527, 235, 253, 257, 258, 644, 645
Haight v. City of Elmira, 59 N. Y. S. 193, 1342
v. Keokuk, 4 Iowa 199, 681
v. New York, 24 Fed. 93, 781
Haile v. Palmer, 5 Mo. 403, 1423
Haines v. Campion, 3 Harr. 49, 645
v. School Dist., 41 Maine 246, 243
Haisch v. City of Seattle, 10 Wash. 435, 1185, 1298, 1704
Halbert v. Mayor &c., 10 Abb. Pr. 439, 187
v. State, 22 Ind. 125, 319
Halcombe v. Commissioners, 89 N. C. 346, 1542
Haldeman v. Pennsylvania R. Co., 50 Pa. St. 425, 675
Hale v. City of Kenosha, 29 Wis. 599, 1231, 1520
v. Commonwealth, 8 Pa. St. 415, 328
v. Risley, 69 Mich. 596, 1496
Haley v. City of Alton, 152 Ill. 113, 719, 1241, 1283

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Haley v. Whitney, 53 Hun 119, 229
Hall v. Baker, 74 Wis. 118, 424, 445, 659
v. City of Buffalo, 1 Keyes 193, 1191
v. City of Chippewa Falls, 47 Wis. 267, 1255
v. Cockrell, 28 Ala. 507, 216
v. Corporation of Washington, 4 Cranch 722, 530
v. De Cuir, 95 U. S. 485, 138, 1493
v. Inhabitants &c., 116 Mass. 172, 357
v. Inhabitants &c., 133 Mass. 433, 824
v. People, 57 Ill. 307, 339, 695, 1683
v. School Dist., 46 Vt. 19, 362
v. Smith, 2 Bing. 156, 225
Halleck v. Inhabitants &c., 117 Mass. 469, 365, 1425
Hallenbeck v. Hahn, 2 Neb. 377, 983
Hallman v. City of Platteville, 101 Wis. 94, 789
Hallock v. Inhabitants &c., 2 Met. 558, 705
Halloran v. Carter, 13 N. Y. S. 214, 1647
Hall's Free School Trustees v. Horne, 80 Va. 470, 1493
Halsey v. People, 84 Ill. 89, 1253
v. Rapid Transit St. R. Co., 47 N. J. Eq. 380, 279, 554, 682
Halstead, Ex parte, 89 Cal. 471, 1413
v. Mayor, 3 Comst. 430, 233, 251, 253, 647, 664, 668
v. Village of Warsaw, 59 N. Y. S. 518, 1364
Ham v. City of Salem, 100 Mass. 350, 688
v. Greve, 34 Ind. 18, 321
v. Mayor &c., 70 N. Y. 459, 781, 788, 1097
Hamar v. Covington, 3 Met. 494, 831
Hambleton v. Town of Dexter, 89 Mo. 188, 448, 1683
Hamilton v. City of Detroit, 105 Mich. 514, 1336, 1348
v. Gambell, 31 Or. 328, 1713
v. Inhabitants &c., 55 Maine 193, 347, 358
v. Mayor &c., 52 Ga. 435, 265, 1112
v. Minneapolis Desk Mfg. Co., 78 Minn. 3, 1768
v. Newcastle &c. R. Co., 9 Ind. 359, 260
v. President &c., 24 Ill. 22, 64
v. State, 3 Ind. 452, 339
v. State, 3 Tex. App. 643, 607
v. Vicksburg &c. R. Co., 119 U. S. 280, 1576
Hamilton Co. v. Massachusetts, 6 Wall. 632, 1512
Hamlin v. Dingman, 5 Lans. 61, 197, 289
v. Kassafer, 15 Or. 456, 195, 196, 197
Hammett v. Philadelphia, 65 Pa. St. 146, 593, 1195, 1231, 1233, 1297, 1537
Hammond v. Haines, 25 Md. 541, 107
v. School Board &c., 109 Mich. 676, 1506
Hammonds v. Richmond Co., 72 Ga. 188, 805
Hampshire Co., In re, 143 Mass. 424, 1249
Hampson v. Taylor, 15 R. I. 83, 1566, 1632
Hancock v. City of Boston, 1 Met. 122, 1739
v. District Tp. of Perry, 78 Iowa 550, 1474
Hancock St. Extension, 18 Pa. St. 26, 1234
Hand v. Fellows, 148 Pa. St. 456, 583
Hand v. Inhabitants &c., 126 Mass. 324, 824
v. Newton, 92 N. Y. 88, 19
Handley v. Palmer, 91 Fed. 948, 563
Handy v. City of New Orleans, 39 La. An. 107, 650
Haney v. City of Kansas, 94 Mo. 334, 1180
v. Marshall, 9 Md. 194, 137
Hanger v. Abbott, 6 Wall. 532, 455
v. City of Des Moines, 52 Iowa 193, 670
Hankins v. Calloway, 88 Ill. 155, 186
v. People, 106 Ill. 628, 496
Hanlon v. Partridge, 69 N. H. 88, 223
Hanna v. Cincinnati &c. R. Co., 20 Ind. 30, 994
Hannewinkle v. Georgetown, 15 Wall. 547, 1697, 1717, 1718, 1722
Hannibal &c. R. Co. v. Marion Co., 36 Mo. 294, 285, 1539
Hannon v. Agnew, 96 N. Y. 439, 282
v. Grizzard, 89 N. C. 115, 185
v. Grizzard, 96 N. C. 293, 221
v. St. Louis Co., 62 Mo. 318, 778
Hanover School Tp. v. Gant, 125 Ind. 557, 1476
Hanscom v. City of Boston, 141 Mass. 242, 1615
v. City of Omaha, 11 Neb. 37, 1231, 1253, 1499
Hansen v. Hammer, 15 Wash. 315, 1292, 1505
v. Hirsch, 27 Or. 487, 1315
Hanson, Ex parte, 28 Fed. 127, 1404
v. Borough of Warren, 14 Atl. 405, 1605
v. Eichstaedt, 69 Wis. 538, 1428
v. Vernon, 27 Iowa 28, 983, 1536, 1537, 1542
v. Wm. A. Hunter Elec. L. Co., 86 Iowa 722, 1467
Hapgood v. Doherty, 8 Gray 373, 699
Harbaugh v. City of Monmouth, 74 Ill. 367, 519
Harbeck v. City of Toledo, 11 Ohio St. 219, 692
Harcourt v. Good, 39 Tex. 455, 983
Hardaker v. Idle Dist. Council, L. R. 1 Q. B. D. 335, 796
Hardcastle v. State, 27 N. J. L. 551, 348
Hardenbrook v. Town of Ligonier, 95 Ind. 70, 493, 530, 539
Hardenburgh v. Van Keuren, 4 Abb. N. C. 43, 994
Harder v. City of Minneapolis, 40 Minn. 446, 828, 1623
Hardesty v. Fleming, 57 Tex. 395, 1552
Hardin v. Carrico, 3 Met. 289, 333
v. Colquitt, 63 Ga. 588, 1694
Hardin Co. v. Louisville &c. R. Co., 92 Ky. 412, 281, 625
v. McFarlan, 82 Ill. 138, 835, 977
v. Wright Co., 67 Iowa 127, 1063
Harding v. Bader, 75 Mich. 316, 277
v. Goodlet, 3 Yerg. 40, 685
v. Rockford &c. R. Co., 65 Ill. 90, 973, 988
v. Vandewater, 40 Cal. 77, 275, 732
v. Woodcock, 137 U. S. 43, 223
Hardmann v. Bowen, 39 N. Y. 196, 311
Hardy v. City of Orange, 61 N. J. L. 620, 163
v. Inhabitants &c., 3 Met. 163, 576, 867
v. Keene, 52 N. H. 370, 820
v. Keene, 54 N. H. 449, 1573
v. McKinney, 107 Ind. 364, 708
v. Merriweather, 14 Ind. 203, 971
Hargreaves v. Deacon, 25 Mich. 1, 795, 810
v. Hopper, L. R. 1 C. P. D. 195, 127

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Hargro v. Hodgdon, 89 Cal. 623, 1565
Hargroves v. Cooke, 15 Ga. 321, 1488
Hark v. Gladwell, 49 Wis. 172, 300, 360
Harker v. Mayor, 17 Wend. 199, 85, 538
Harlem Gaslight Co. v. Mayor &c., 3 Robt. 100, 894
Harlow v. Borough of Beaver Falls, 188 Pa. St. 263, 741
Harman v. City of St. Louis, 137 Mo. 494, 1112
v. Harwood, 58 Md. 1, 150
v. Tappenden, 1 East 555, 207
Harmison v. City of Lewistown, 153 Ill. 313, 1117
Harmon v. City of Chicago, 110 Ill. 400, 466, 492, 621, 1120
v. City of Omaha, 17 Neb. 548, 1209, 1301
v. Inhabitants &c., 9 Cush. 525, 1519
Harmony v. Bingham, 12 N. Y. 99, 1263
Harness v. Chesapeake &c. Canal Co., 1 Md. Ch. 248, 674
v. State, 76 Tex. 566, 93, 164
Harney v. Benson, 113 Cal. 314, 1281
v. Heller, 47 Cal. 15, 1256
v. Indianapolis &c. R. Co., 32 Ind. 244, 651
Harper v. City of Milwaukee, 30 Wis. 365, 811, 1112, 1208
v. Commissioners &c., 23 Ga. 566, 1714
v. Lexington &c. R. Co., 2 Dana 227, 693
v. Mayor &c., 94 Ga. 801, 596
Harper Co. Com'rs v. Rose, 140 U. S. 71, 978
Harrell v. Storrie, 47 S. W. 838, 1268
Harrigan v. City of Wilmington, 8 Houst. 140, 1180
v. Village of Hoosick Falls, 1 N. Y. S. 57, 1604
Harriman v. City of Boston, 114 Mass. 241, 1616
Harrington v. City of Buffalo, 2 N. Y. S. 333, 1599, 1606
v. Commissioners &c., 2 McC. 400, 335
v. County Com'rs, 22 Pick. 263, 705
v. Wofford, 46 Miss. 31, 693
Harris, Ex parte, 52 Ala. 87, 1672
v. Baker, 4 M. & S. 27, 225
v. Board &c., 105 Ill. 445, 1084
v. Chickasaw Co., 77 Iowa 345, 944
v. City of Atlanta, 62 Ga. 290, 798, 1075
v. City of Fond Du Lac, 104 Wis. 44, 930
v. City of St. Joseph, 99 Fed. 246, 723
v. Hanson, 2 Fairf. 241, 330, 332
v. Nesbit, 24 Ala. 398, 124
v. Pepperell, L. R. 5 Eq. 1, 1015
v. School Dist., 8 Fost. (28 N. H.) 58, 12, 348, 366, 1480, 1485
v. Thompson, 9 Barb. 350, 685
v. Uebelhoer, 75 N. Y. 169, 1639
v. Wakeman, Say. 254, 467, 536
v. Whitcomb, 4 Gray 433, 370, 1424
v. Wood, 6 T. B. Mon. 641, 1714
Harrison v. Augusta Factory, 73 Ga. 447, 1214
v. Board &c., 51 Wis. 645, 1216
v. Brooks, 20 Ga. 537, 1387
v. City of Elgin, 53 Ill. App. 452, 1348
v. City of Milwaukee, 49 Wis. 247, 246, 1726
v. City of New Orleans, 40 La. An. 509, 854
v. Mayor &c., 1 Gill 264, 594, 1079, 1099, 1100, 1391
Harrison v. Town of Plainview, 27 Minn. 224, 1539, 1728
v. Williams, 3 B. & C. 162, 11
Harriss v. Wright, 121 N. C. 172, 104
Harshman v. Bates Co., 92 U. S. 569, 210, 994, 995
v. Knox Co. Court, 122 U. S. 306, 1525
Hart v. Burnett, 15 Cal. 530, 629, 630, 1743
v. City of Brooklyn, 36 Barb. 226, 1198
v. City of New Orleans, 12 Fed. 292, 1529, 1530
v. Lancashire &c. R. Co., 21 L. T. 261, 1627
v. Mayor &c., 9 Wend. 571, 527, 532, 535, 620, 1085, 1115
v. Mayor &c., 3 Paige 213, 1081, 1121
v. Poor Guardians, 81½ Pa. St. 466, 319
v. United States, 118 U. S. 62, 773
Harter v. Kernochan, 103 U. S. 562, 995
Hartford Bridge Co. v. Town of East Hartford, 16 Conn. 149, 435, 1519
Hartford Fire Ins. Co. v. City of Peoria, 156 Ill. 420, 542, 612
Hartford Tp. v. Bennett, 10 Ohio St. 441, 199
Hartman v. City of Muscatine, 70 Iowa 511, 1635
Hartnall v. Ryde Com'rs, 4 B. & S. 361, 812, 831
Hartrick v. Town of Farmington, 108 Iowa 31, 1162
Hartshorn v. Schoff, 58 N. H. 197, 287
Hart Tp. v. Oceana Co., 44 Mich. 417; 48 Mich. 319, 868
Hartwell v. Armstrong, 19 Barb. 166, 689, 1084
v. Inhabitants &c., 3 Pick. 229, 1427
Harvey v. Aurora &c. R. Co., 186 Ill. 283, 492, 508
v. Benson, 113 Cal. 314, 1130
v. City of Clarinda, 111 Iowa 528, 1329, 1333
v. Commissioners &c., 32 Kan. 159, 173
v. De Woody, 18 Ark. 252, 1115
v. Indianapolis &c. R. Co., 32 Ind. 244, 1730
v. Thomas, 10 Watts 63, 673, 674
v. Tyler, 2 Wall. 328, 694
Harward v. St. Clair &c. Co., 51 Ill. 130, 624
Harwinton v. Catlin, 19 Conn. 520, 684
Harwood v. City of Lowell, 4 Cush. 310, 814, 1594
v. Marshall, 9 Md. 83, 187
Hasbrouck v. City of Milwaukee, 13 Wis. 37, 548, 1523, 1534, 1538
v. City of Milwaukee, 25 Wis. 122, 1534
Haskell v. Bartlett, 34 Cal. 281, 486
v. New Bedford, 108 Mass. 208, 817
Hassell v. Long, 2 M. & S. 363, 326
Hassen v. City of Rochester, 65 N. Y. 516, 1288
Hastings v. Bolton, 1 Allen 529, 1740
v. City of San Francisco, 18 Cal. 49, 1734
v. Columbus, 42 Ohio St. 585, 487
v. Farmer, 4 N. Y. 293, 136
Hatch v. City of Buffalo, 38 N. Y. 276, 1724
v. Hawkes, 126 Mass. 177, 335, 1570
v. Inhabitants &c., 97 Mass. 533, 318
v. Willamette &c. Bridge Co., 7 Saw. 127, 1576

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Hatcheson v. Tilden, 4 Harr. & McH. 279, 379
Hathaway v. Inhabitants &c., 48 Maine 440, 352, 353
v. Sackett, 32 Mich. 97, 664
v. Town of Homer, 5 Lans. 267, 870
Havemeyer v. Iowa Co., 3 Wall. 294, 410, 764, 1029
Haven v. Asylum, 13 N. H. 532, 1425
v. City of Lowell, 5 Met. 35, 280, 362
v. Grand Junction R. &c. Co., 109 Mass. 88, 1019
Havens v. Lathem, 75 N. C. 505, 319
Haverhill Bridge Proprietors v. County Com'rs, 103 Mass. 120, 685
Hawes v. City of Chicago, 158 Ill. 653, 501, 504, 1130, 1148, 1710
v. Town of Fox Lake, 33 Wis. 438, 1597
Hawk v. Marion Co., 48 Iowa 472, 669, 670, 671
Hawkes v. Inhabitants &c., 7 Mass. 461, 1526
v. Inhabitants &c., 107 Mass. 414, 1159
Hawk Eye &c. Co. v. City of Marion, 110 Iowa 468, 1553
Hawkins v. Board &c. of Carroll Co., 50 Miss. 735, 982, 986
v. Common Council &c., 120 Mich. 390, 1685
v. County Com'rs, 2 Allen 254, 693, 1571
v. Dougherty, 9 Houst. 156, 1682
v. United States, 96 U. S. 689, 647
Hawley v. City of Atlantic, 92 Iowa 172, 794
v. City of Gloversville, 38 N. Y. S. 647, 1343
v. Fairbanks, 108 U. S. 543, 1528
v. Mayor &c., 82 N. C. 22, 1526
Hawthorn v. City of St. Louis, 11 Mo. 59, 1745
Hawthorne v. City of East Portland, 12 Or. 271, 1254
Hay v. City of Springfield, 64 Ill. App. 671, 672, 877
v. Cohoes Co., 2 N. Y. 159, 823
Hayden v. Atlanta, 70 Ga. 817, 1269
v. City Council &c., 100 Tenn. 582, 203, 204
v. Inhabitants &c., 7 Gray 358, 1597
v. Memphis, 100 Tenn. 582, 1712
v. Noyes, 5 Conn. 391, 100, 342, 363
v. Tucker, 37 Mo. 214, 1119
Hayes v. City of Cambridge, 136 Mass. 402, 1584
v. City of Oshkosh, 33 Wis. 314, 781, 797, 1096
v. City of West Bay City, 91 Mich. 418, 1325
v. Douglas Co., 92 Wis. 429, 1242, 1279
v. Hanson, 12 N. H. 284, 1569
v. Holly Springs, 114 U. S. 120, 233, 636, 986, 994
v. Inhabitants &c., 153 Mass. 514, 1601
v. Missouri, 120 U. S. 68, 139
v. Porter, 22 Maine 371, 223
v. Symonds, 9 Barb. 260, 1054
Hayford v. County Com'rs &c., 78 Maine 153, 696
Haygood v. Justices &c., 20 Ga. 845, 9
Haynes v. Bridge, 1 Coldw. 32, 329
v. City of Cape May, 50 N. J. L. 55, 500
v. City of Cape May, 52 N. J. L. 180, 602, 1396
v. Covington, 21 Miss. 408, 646
v. Washington Co., 19 Ill. 66, 431
Hays v. City of Cincinnati, 62 Ohio St. 116, 1259, 1311
v. City of Oil City, 11 Atl. 63, 181
v. Commonwealth, 82 Pa. St. 518, 5, 376
v. Hogan, 5 Cal. 241, 1725
v. Pacific &c. Co., 17 How. 596, 1502
Hayward v. Inhabitants &c., 2 Cush. 419, 340, 1485
v. Mayor &c., 8 Barb. 486, 689
Haywood v. Charlestown, 34 N. H. 23, 1572
v. Mayor &c., 12 Ga. 404, 107, 468, 491
Hayzlett v. City of Mt. Vernon, 33 Iowa 229, 1545
Hazard v. City of Council Bluffs, 79 Iowa 106, 1179
v. Wason, 152 Mass. 268, 1740
Hazen v. Lerche, 47 Mich. 626, 1480, 1485
Hazzard v. Heacock, 39 Ind. 172, 1262
Head v. Providence Ins. Co., 2 Cranch 127, 253, 638
Headrick v. Whittemore, 105 Mass. 23, 693
Healey v. City of New Haven, 49 Conn. 394, 1224
Healy v. Mayor &c., 3 Hun 708, 1641
Heard v. City of Brooklyn, 60 N. Y. 242, 675
v. Harris, 68 Ala. 43, 334
Heath, Ex parte, 3 Hill 42, 1418, 1692
v. Barmore, 50 N. Y. 302, 675
v. Des Moines &c. R. Co., 61 Iowa 11, 1368
v. McCrea, 21 Wash. 342, 1311
Hebard v. Ashland Co., 55 Wis. 145, 883
Hebron G. R. Co. v. Harvey, 90 Ind. 192, 1177
Hechinger v. City of Maysville, 57 S. W. 619, 1385
Hecht v. Boughton, 2 N. Y. 385, 1540
Heckel v. Sandford, 40 N. J. L. 180, 452
Heckscher v. City of Philadelphia, 9 Atl. 281, 1738
Hedenberg v. City of Chicago, 163 Ill. 129, 1145
Hedges v. Madison Co., 1 Gilman 567, 267, 775
Heeney v. Sprague, 11 R. I. 456, 528, 1588
v. Trustees &c., 33 Barb. 360, 134
Heffleman v. Pennington Co., 3 S. Dak. 162, 958, 959
Heffner v. Commonwealth, 28 Pa. St. 108, 339, 1655, 1681
Heffran v. Hutchins, 160 Ill. 550, 209, 1697
Heick v. Voight, 110 Ind. 279, 1572
Heidelberg v. San Francois Co., 100 Mo. 69, 260, 1171
Heidelberg School Dist. v. Horst, 62 Pa. St. 301, 262
Heidenway v. City of Philadelphia, 168 Pa. St. 72, 808
Heilbron, Ex parte, 65 Cal. 607, 1079
v. Mayor &c., 96 Ga. 312, 572
Heilman v. Lebanon &c. St. R. Co., 175 Pa. St. 188, 1706
Heine v. Levee Com'rs, 19 Wall. 655, 458, 1526, 1528, 1529, 1544, 1719
Heinemann v. Heard, 62 N. Y. 448, 1204
Heinerberg v. Village of Hyde Park, 130 Ill. 156, 1175
Heinrich v. City of St. Louis, 125 Mo. 424, 1318, 1698
Heins v. Lincoln, 102 Iowa 69, 479, 1021
Heiple v. Clackamas Co., 20 Or. 147, 1169
Heiser v. Hatch, 86 N. Y. 614, 1599

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Heiser v. Mayor &c., 104 N. Y. 68, 556, 781, 1213, 1603
Heiskell v. Mayor &c., 65 Md. 125, 289, 290, 473
Heland v. City of Lowell, 3 Allen 407, 466, 552
Held v. Bagwell, 58 Iowa 139, 224, 321
Hellen v. Noe, 3 Ired. L. 493, 533, 1093
Hellenkamp v. City of Lafayette, 30 Ind. 192, 947, 1224
Heller v. Atchison &c. R. Co., 28 Kan. 625, 1317
v. City of Garden City, 58 Kan. 263, 1308
v. Mayor &c., 53 Mo. 159, 264, 786
v. Stremmel, 52 Mo. 309, 10, 12
Helms v. Chadbourne, 45 Wis. 60, 1737
Heman v. Allen, 156 Mo. 534, 508, 1294
v. Handlin, 59 Mo. App. 490, 1165
v. McNamara, 77 Mo. App. 1, 1284
v. St. Louis Merchants' &c. Co., 75 Mo. App. 372, 1340
Heman Con. Co. v. Loevy, 64 Mo. App. 430, 515, 551
Hembling v. City of Big Rapids, 89 Mich. 1, 801, 802
Heminway v. Inhabitants &c., 33 Maine 445, 1727
Hemphill v. City of Boston, 8 Cush. 195, 1561
Hempstead v. City of Des Moines, 52 Iowa 313, 1224
Hempstead Co. v. Howard Co., 51 Ark. 344, 441, 946
Hendershott v. City of Ottumwa, 46 Iowa 658, 680
Henderson v. City of Covington, 14 Bush 312, 88, 672
v. City of Minneapolis, 24 Minn. 254, 1215
v. City of Minneapolis, 32 Minn. 319, 587, 801
v. City of S. Omaha, 60 Neb. 125, 1142
v. Davis, 106 N. C. 88, 64
v. Mayor, 3 La. 563, 191
v. Mayor &c., 8 Md. 352, 1137, 1254, 1533
v. Smith, 26 W. Va. 829, 221
Henderson &c. R. Co. v. Dickerson, 17 B. Mon. 173, 698
Hendricks v. Board &c., 35 Kan. 483, 939, 1072
v. Johnson, 45 Miss. 644, 960
Hendrickson v. City of New York, 160 N. Y. 144, 732, 1185
v. City of New York, 56 N. Y. S. 580, 1141
v. Decow, 1 Saxt. 577, 474
Heney v. Pima Co., 17 Pac. 263, 944
Hengst v. City of Cincinnati, 7 Ohio N. P. 1, 1384
Henion, Ex parte, 55 Pac. 326, 1713
Henke v. McCord, 55 Iowa 378, 532
Henker v. City of Fond du Lac, 71 Wis. 616, 1589
Henline v. People, 81 Ill. 269, 696
Henly v. Mayor of Lyme Regis, 5 Bing. 91, 222, 831
Henniker v. Weare, 9 N. H. 573, 1046
v. Wyman, 58 N. H. 528, 869
Henry v. Dubuque, 10 Iowa 540, 705
v. Gregory, 29 Mich. 68, 1722
v. Horstick, 9 Watts 412, 1551
v. Lansdowne, 40 Mo. App. 431, 1419
v. Selvage, 99 Ky. 232, 1275
v. State, 98 Ind. 381, 911
v. Taylor, 57 Iowa 72, 416
v. Thomas, 119 Mass. 583, 1258
v. Town of Chester, 15 Vt. 460, 1551
Henry Co. v. Nicolay, 95 U. S. 619, 995
Henshaw v. Cotton, 127 Mass. 60, 1743
v. Foster, 9 Pick. 312, 158
Hentig v. Gilmore, 33 Kan. 234, 1153
Hepburn v. City of Philadelphia, 149 Pa. St. 335, 1133
Hequembourg v. City of Dunkirk, 2 N. Y. S. 447, 156, 896
Herbert v. Lavalle, 27 Ill. 448, 629
v. Mayor &c., 64 N. J. L. 548, 1174, 1378
Hercules Iron Works v. Elgin &c. R. Co., 141 Ill. 491, 1409, 1412, 1413
Herhold v. City of Chicago, 108 Ill. 467, 1566
Heriot's Hospital v. Ross, 12 Cl. & F. 507, 807
Herman v. City of Crete, 9 Neb. 350, 240
v. City of Oconto, 100 Wis. 391, 483, 728, 733
v. Wolf, 23 Mo. App. 200, 1234
Herr v. City of Lebanon, 149 Pa. St. 222, 1332, 1600
Herrick v. Carpenter, 54 Iowa 340, 556
v. Stover, 5 Wend. 581, 1568
Herring v. Wilmington R. Co., 10 Ired. 402, 1641
Herrington v. District Tp. of Liston, 47 Iowa 11, 1088
v. Village of Lansingburg, 110 N. Y. 145, 1591
Hersey v. Board &c., 16 Wis. 198, 1288
v. Board &c., 37 Wis. 75, 1550, 1720
Hershberger v. City of Pittsburgh, 115 Pa. St. 78, 1544
Herzo v. City of San Francisco, 33 Cal. 134, 631, 1132
Hesketh v. Braddock, 3 Burr. 1847, 528, 529
Hess v. Pegg, 7 Nev. 23, 104
Hessler v. Drainage Com'rs, 53 Ill. 105, 697
Hester v. Fortner, 2 Binn. 40, 228
Heth v. City of Fond du Lac, 63 Wis. 228, 1216
Heth Tp. v. Lewis, 114 Ind. 508, 862
Heughes v. Board of Education &c., 55 N. Y. S. 799, 731
Hewes v. Reis, 40 Cal. 255, 570, 1133, 1255
v. Village of Crete, 175 Ill. 348, 1321
v. Village of Winnetka, 60 Ill. App. 654, 1701
Hewison v. City of New Haven, 34 Conn. 136, 265
v. City of New Haven, 37 Conn. 475, 8, 814, 1594, 1612
Hewitt's Appeal, 88 Pa. St. 55, 1160, 1516, 1518
v. Board &c., 94 Ill. 528, 973, 977
v. Miller, 21 Vt. 402, 1474
v. State, 6 Har. & J. 95, 322
v. White, 78 Mich. 117, 606
Hexamer v. Webb, 101 N. Y. 377, 1591
Heyfron v. Mahoney, 9 Mont. 497, 371
Heylman, Ex parte, 92 Cal. 492, 1395
Heymann v. Cunningham, 51 Wis. 506, 1737
Heywood v. City of Buffalo, 14 N. Y. 534, 1202, 1287, 1722, 1723, 1724
v. Mayor &c., 7 N. Y. 314, 675, 685
Hibbard v. City of Chicago, 173 Ill. 91, 1105, 1316
v. Clark, 56 N. H. 155, 530
Hickey v. Board &c., 62 Mich. 94, 938, 1664
v. Chicago &c. R. Co., 6 Ill. App. 172, 282
Hickman v. O'Neil, 10 Cal. 292, 1411
Hickok v. Hine, 23 Ohio St. 523, 634

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Hickok v. Town of Shelburne, 41 Vt. 409, 351, 355, 362, 1424
v. Trustees &c., 15 Barb. 427, 222
Hicks v. Dorn, 42 N. Y. 47, 222
v. Ward, 69 Maine 436, 1321
Higbee v. Peed, 98 Ind. 420, 1573
Higert v. City of Greencastle, 43 Ind. 574, 1624
Higgins v. Ausmuss, 77 Mo. 351, 1262
v. Bordages, 88 Tex. 458, 1262
v. City of Chicago, 18 Ill. 276, 705
v. City of New York, 131 N. Y. 128, 172
v. City of San Diego, 115 Cal. 170, 609
v. Curtis, 39 Kan. 283, 301
v. San Diego Water Co., 118 Cal. 524, 725, 734, 877, 925
v. Village of Salamanca, 6 N. Y. St. 119, 826
Higginson v. Inhabitants &c., 11 Allen 530, 687, 692
v. Turner, 171 Mass. 586, 70, 563
Hight v. Board &c., 68 Ind. 575, 663, 670
Highway Com'rs v. Ely, 54 Mich. 173, 223, 335
v. Van Dusen, 40 Mich. 429, 634, 643
Higley v. Bunce, 10 Conn. 436, 485
v. Bunce, 10 Conn. 567, 482
Hilbish v. Catherman, 64 Pa. St. 154, 979
Hildman v. City of Phillips, 106 Wis. 611, 1366
Hildreth v. City of Lowell, 11 Gray 345, 689
v. McIntire, 1 J. J. Marsh. 206, 289, 296
Hill v. Board &c., 72 N. C. 55, 225, 264, 808, 830, 1388
v. City of Boston, 122 Mass. 344, 9, 15, 129, 142, 148, 469, 776, 777 783, 803, 810, 814, 820, 1068 1526, 1585, 1594
v. City of Fond du Lac, 56 Wis. 242, 1588
v. City of Indianapolis, 92 Fed. 467, 711, 1710
v. City of Kahoka, 35 Fed. 32, 454
v. Commissioners &c., 22 Ga. 203, 467
v. Commissioners &c., 67 N. C. 367, 983
v. Fitzpatrick, 6 Ala. 314, 323
v. Higdon, 5 Ohio St. 243, 1231, 1253, 1269, 1502, 1521
v. Kemble, 9 Cal. 71, 328
v. Mayor &c., 72 Ga. 314, 541, 542, 1413
v. Memphis, 134 U. S. 198, 562, 635, 637, 973, 974, 978, 982 984, 1013
v. Mohawk &c. R. Co., 5 Denio 206, 701
v. New Orleans &c. R. Co., 11 La. An. 292, 743
v. Portland &c. R. Co., 55 Maine 438, 1618
v. School Dist., 17 Maine 316, 1480
v. Scotland Co., 34 Fed. 208, 1031
v. Selectman &c., 140 Mass. 381, 608
v. State, 4 Sneed 443, 213, 831
v. Tionesta Tp., 146 Pa. St. 11, 1635
v. Tottenham &c. Council, 79 L. T. (N. S.) 495, 1358
v. Warrell, 87 Mich. 135, 1234
v. Winsor, 118 Mass. 251, 1595
Hiller v. Village of Sharon Springs, 28 Hun 344, 1619
Hillesum v. Mayor &c., 56 N. Y. Super. Ct. 596, 1626
Hilliard v. City of Asheville, 118 N. C. 845, 1268, 1269, 1701
Hills v. Peekskill Sav. Bank, 101 N. Y. 490, 1022
Hillsborough v. Deering, 4 N. H. 86, 1058
Hilton v. Fonda, 86 N. Y. 339, 229
Himmelman v. Danos, 35 Cal. 441, 1255
Hinchman v. Paterson Horse R. Co., 17 N. J. Eq. 75, 590
Hincks v. City of Milwaukee, 46 Wis. 559, 558, 1589
Hine v. City of New Haven, 40 Conn. 478, 509, 673, 1392
Hiner v. City of Fond du Lac, 71 Wis. 74, 1589, 1629
Hines v. City of Charlotte, 72 Mich. 278, 820, 830
v. City of Leavenworth, 3 Kan. 186, 1253, 1269
v. City of Lockport, 50 N. Y. 236, 224, 778, 812, 821
Hingham &c. Co. v. Norfolk Co., 6 Allen 353, 685, 1178, 1252
Hinkle v. Commonwealth, 4 Dana 518, 539
Hinrichs v. City of New Orleans, 50 La. An. 1214, 735
Hintrager v. Richter, 85 Iowa 222, 891, 959, 960
Hintze v. City of Elgin, 186 Ill. 251, 1260, 1276
Hirn v. State, 1 Ohio St. 15, 106
Hisey v. City of Charleston, 62 Mo. App. 381, 463
v. City of Mexico, 1 Mo. App. Repr. 393, 1370
Hiss v. Baltimore &c. R. Co., 52 Md. 242, 591
Hisser v. Grafton, 33 W. Va. 548, 1639
Hitch v. Lambright, 66 Ga. 228, 221
Hitchcock v. City of Galveston, 48 Fed. 640, 4 Woods 308, 1529, 1655
v. City of St. Louis, 49 Mo. 484, 549, 1730
v. Danbury &c. R. Co., 25 Conn. 516, 1570
v. Galveston, 96 U. S. 341, 238, 239, 240, 285, 547, 633, 649 719, 746, 836, 978, 1232, 1261, 1305 1306, 1309
Hitchins v. Mayor &c., 68 Md. 100, 791, 820, 1208
Hite v. Whitley Co. Court, 91 Ky. 168, 805
Hixon v. City of Lowell, 13 Gray 59, 814, 1594, 1612
Hoadley v. City of San Francisco, 124 U. S. 639, 630
v. City of San Francisco, 50 Cal. 265, 630, 1214
v. City of San Francisco, 70 Cal. 320, 630
Hoag v. City of Mt. Vernon, 58 N. Y. S. 581, 1378
v. Durfey, 1 Alk. 286, 1425, 1427
Hoagland v. Culvert, 20 N. J. L. 387, 187
Ho Ah Kow v. Nunan, 5 Saw. 552, 517
Hobart v. Milwaukee City R. Co., 27 Wis. 194, 591
v. Supervisors, 17 Cal. 23, 58, 83, 763
Hobbs v. Board &c., 116 Ind. 376, 1201
v. City of Yonkers, 102 N. Y. 13, 174, 175
v. Inhabitants &c., 19 Pick. 405, 571, 1559
Hoblyn v. King, 6 Bro. P. C. 511, 289

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Hoboken v. Pennsylvania R. Co., 124 U. S. 656, 1563
Hoboken Land &c. Co. v. Mayor &c., 36 N. J. L. 540, 1563
Hockady v. Board &c., 1 Colo. App. 362, 916
Hockett v. State, 105 Ind. 250, 6, 574
Hodges v. City of Buffalo, 2 Denio 110, 210, 251, 252, 253, 644, 646, 668, 715
v. City of Waterloo, 109 Iowa 444, 1342, 1343
v. Percival, 132 Ill. 53, 1627
v. Runyan, 30 Mo. 461, 217
v. Western Union &c. Co., 72 Miss. 910, 1348
Hodgman v. Chicago &c. R. Co., 20 Minn. 48, 990, 991, 1540
Hodgson v. Dexter, 1 Cranch 345, 215, 216
Hoester v. Sammelmann, 101 Mo. 619, 586
Hoey v. Gilroy, 129 N. Y. 132, 584, 1370
v. Gilroy, 37 N. Y. St. 754, 620, 644
Hoffeld v. City of Buffalo, 130 N. Y. 387, 1197, 1287
Hoffman v. San Joaquin Co., 21 Cal. 426, 814
Hogan v. City of Watervliet, 59 N. Y. S. 103, 1343
Hoge v. Railroad Co., 99 U. S. 348, 104
Hogenson v. St. Paul &c. R. Co., 31 Minn. 224, 1215
Hoggard v. Mayor &c., 51 La. An. 683, 597
Hoglan v. Carpenter, 4 Bush 89, 185
Holtt v. Burnham, 61 N. H. 620, 346
Hoke v. City of Atlanta, 107 Ga. 416, 1304
v. Henderson, 4 Dev. 1, 183, 199
v. Perdue, 62 Cal. 545, 1287
Holbrook v. Faulkner, 55 N. H. 311, 302, 360, 632, 1485
Holcomb v. Town of Danby, 51 Vt. 428, 828
Holdane v. Trustees &c., 23 Barb. 103, 1556
v. Trustees &c., 21 N. Y. 474, 1559, 1560, 1562
Holden v. City of Alton, 179 Ill. 318, 749, 1698
v. City of Chicago, 172 Ill. 263, 1154
Holder v. City of Yonkers, 56 N. Y. S. 912, 609
Holladay v. Frisbie, 15 Cal. 630, 629, 1529, 1744
Holland v. City of San Francisco, 7 Cal. 361, 554
v. Davies, 36 Ark. 446, 372, 1485
v. Mayor &c., 11 Md. 186, 88, 108, 1236, 1257, 1533, 1722
v. State, 23 Fla. 123, 284
Hollenbeck v. Winnebago Co., 95 Ill. 148, 775, 1076
Holleran v. City of Boston, 176 Mass. 75, 783
Holliday v. People, 10 Ill. 214, 759
v. St. Leonard, 11 C. B. 192, 225, 807
Hollman v. Carroll's Adm'r, 27 Tex. 23, 332
Hollingsworth v. Thompson, 45 La. An. 222, 986
v. Virginia, 3 Dall. 378, 45, 770
Holloway v. Delano, 64 Hun 27, 1565
v. Ogden School Dist., 62 Mich. 153, 1491
Hollwedell, Ex parte, 74 Mo. 395, 1420
Holly v. Bennett, 46 Minn. 386, 1424
Holman v. Inhabitants &c., 13 Met. 297, 776
Holman v. School Trustees, 77 Mich. 605, 1481, 1493
Holmes v. Common Council &c., 120 Mich. 226, 750
v. Mayor &c., 12 N. J. Eq. 299, 1233, 1374
v. Village of Hyde Park, 121 Ill. 128, 571, 1175, 1280, 1283
Holt's Appeal, 5 R. I. 603, 1485
Holt v. City Council, 127 Mass. 408, 300, 675, 1178, 1256
Holten v. Board &c., 55 Ind. 194, 665
Holton v. City of Milwaukee, 31 Wis. 27, 1233
Holtz v. Diehl, 56 N. Y. S. 841, 578
Holtzman v. United States, 14 App. D. C. 454, 1344
Home B. & C. Co. v. City of Roanoke, 91 Va. 52, 1208
Home Ins. Co. v. City Council, 50 Ga. 530, 1508
v. Holway, 55 Iowa 571, 320
Hommert v. Gleason, 14 N. Y. S. 568; 38 N. Y. St. 342, 189, 221
Honey Creek School Tp. v. Barnes, 119 Ind. 213, 626, 1482
Hood v. Finch, 8 Wis. 381, 698
v. Mayor &c., 1 Allen 103, 251, 637, 647, 668
v. Trustees &c., 12 Ky. L. 813, 1155
Hooksett v. Amoskeag &c. Co., 44 N. H. 105, 526
Hoole v. Kinkaid, 16 Nev. 217, 753
Hooper v. Emery, 14 Me. 375, 15, 776, 866, 1536
v. Goodwin, 48 Maine 79, 195, 196
Hoops v. Village of Ipava, 55 Ill. App. 94, 1117
Hope v. Deaderick, 8 Humph. 1, 44
Hopkins v. Baltimore &c. R. Co., 6 Mackey 311, 1354
v. City of Duluth, 81 Minn. 189, 117
v. Mayor &c., 4 M. & W. 621, 466
v. Town of Elmore, 49 Vt. 176, 342, 965
v. Town of Rush River, 70 Wis. 10, 1633
Hopper v. Covington, 118 U. S. 148, 637
v. Town of Covington, 8 Fed. 777, 1001
Hopple v. Trustees &c., 13 Ohio St. 311, 983
Horan v. Board &c., 58 N. J. L. 533, 164
v. Lane, 53 N. J. L. 275, 159, 170
Horey v. Village of Haverstraw, 124 N. Y. 273, 1573
Horn v. City of St. Paul, 80 Minn. 369, 173
v. Mayor &c., 30 Md. 218, 646
v. Town of New Lots, 83 N. Y. 100, 1205, 1264, 1551
v. Whittier, 6 N. H. 88, 312, 869
Hornblower v. Duden, 35 Cal. 664, 181, 663, 664
Horner v. City of Philadelphia, 194 Pa. St. 542, 1340
v. Wood, 23 N. Y. 350, 1192
Hornung v. McCarthy, 126 Cal. 17, 1283
v. State, 116 Ind. 458, 298
Horsley v. Bell, 1 Bro. C. C. 101, n., 216
Horton v. City of Taunton, 97 Mass. 266, 818
v. Harrison, 23 Barb. 176, 295
v. Mobile School Com'rs, 43 Ala. 598, 55
v. Newell, 17 R. I. 571, 818
v. Parsons, 37 Hun 42, 187, 198
v. Town of Thompson, 71 N. Y. 513, 644, 1022

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Hosier v. Higgins Tp. Board, 45 Mich. 340, 867
Hoskins v. Brantley, 57 Miss. 814, 378
Hosmer v. City of Gloversville, 59 N. Y. S. 559, 1379
Hospers v. Wyatt, 63 Iowa 264, 652
Hospital v. Philadelphia Co., 24 Pa. St. 229, 1725
Hotchkin v. Borough of Phillipsburg, 8 Atl. 434, 1632
Hotchkiss v. Plunkett, 60 Conn. 230, 667
Hot Springs v. Curry, 64 Ark. 152, 1406
Hot Springs R. Co. v. Williamson, 45 Ark. 429, 678
Hotz v. School Dist., 1 Colo. App. 40, 1491
Hough v. City of Bridgeport, 57 Conn. 290, 301
Houghton v. Davenport, 23 Pick. 235, 348
v. Swarthout, 1 Denio 589, 335
Houghton Co. v. Auditor-General, 36 Mich. 271, 1649
House v. Board &c., 60 Ind. 580, 1580
v. Metcalf, 27 Conn. 631, 1618
v. State, 41 Miss. 737, 1389, 1400
House Bill No. 231, In re, 9 Colo. 624, 946
Householder v. City of Kansas, 83 Mo. 488, 1209, 1602
House of Refuge v. Ryan, 37 Ohio St. 197, 1071
Houston v. City of Lancaster, 191 Pa. St. 143, 882
v. Houston, 67 Ind. 276, 1571
v. Hutchins, 33 S. W. 269, 1219
v. Moore, 5 Wheat. 1, 132
Houston &c. R. Co. v. Carson, 66 Tex. 345, 1354
v. Odum, 53 Tex. 343, 491
Hover v. Barkhoof, 44 N. Y. 113, 222, 224, 336, 778
Hovey v. Mayo, 43 Maine 322, 680, 1287
v. State, 119 Ind. 386, 150
Howard v. Brown, 21 Maine 385, 311
v. City of Augusta, 74 Maine 79, 1551
v. City of Providence, 6 R. I. 514, 701
v. City of San Francisco, 51 Cal. 52, 264
v. City of Worcester, 153 Mass. 426, 803, 810
v. Cornett, 8 Ky. L. 52, 1486
v. Drainage Com'rs, 126 Ill. 53, 708
v. First Ind. Church, 18 Md. 451, 1266
v. Francis Co., 50 Fed. 44, 974
v. Kiowa Co., 73 Fed. 406, 1013
v. McDiarmid, 26 Ark. 100, 104
v. Proctor, 7 Gray 128, 1540
v. Shaw, 18 N. E. 313, 708
v. Shields, 16 Ohio St. 184, 152
v. Shoemaker, 35 Ind. 111, 185, 189, 192, 1418
v. Trustees &c., 10 Ohio 365, 1063
Howard St., In re, 142 Pa. St. 601, 1320
Howe v. City of Cambridge, 114 Mass. 388, 1178, 1714
v. Keeler, 27 Conn. 538, 715, 992
v. Mason, 14 Iowa 510, 221
v. Treasurer &c., 37 N. J. L. 145, 607, 1412, 1414
Howe Ins. Co. v. City Council, 50 Ga. 530, 1521
Howell v. Bristol, 8 Bush 493, 1266, 1538
v. City of Buffalo, 15 N. Y. 512, 722, 1232, 1533, 1726
v. City of Millville, 60 N. J. L. 95, 747, 1184
Howell v. City of Peoria, 90 Ill. 104, 897
v. City of Philadelphia, 38 Pa. St. 471, 458, 1544
v. State, 3 Gill 14, 1502
Howes v. Cush, 131 Mass. 207, 1631
Howland v. City of Chicago, 108 Ill. 496, 1399
v. Eldredge, 43 N. Y. 457, 1649
v. School Dist., 15 R. I. 184, 347, 365, 1485, 1489
v. Wright Co., 82 Iowa 164, 177
Howlett v. Camp, 115 Ala. 499, 499
Hoyt v. City of Danbury, 69 Conn. 341, 1338
v. City of Des Moines, 76 Iowa 430, 1626, 1627
v. City of East Saginaw, 19 Mich. 39, 590, 1131, 1201, 1252, 1255, 1271
v. City of Hudson, 27 Wis. 656, 1216
v. Thompson, 19 N. Y. 207, 714
Hubbard v. City of Taunton, 140 Mass. 467, 608
v. Elden, 43 Ohio St. 380, 332
v. Newton, 52 Vt. 346, 344, 360, 362
v. Russell, 24 Barb. 404, 1095
v. Town of Medford, 20 Or. 315, 594, 1392
v. Town of Williamstown, 61 Wis. 397, 346, 368
v. Winsor, 15 Mich. 145, 274
Hubbell v. City of Viroqua, 67 Wis. 343, 1157
v. City of Yonkers, 104 N. Y. 434, 816, 817, 1587
Huber v. Reily, 53 Pa. St. 112, 369
Huddleston v. City of Eugene, 34 Or. 343, 820
Hudson v. City of Little Falls, 68 Minn. 463, 1326
56, 681
v. Cuero Land &c. Co., 47 Tex.
v. Mayor &c., 64 Ga. 286, 260, 895
Hudson Co. v. State, 24 N. J. L. 718, 273, 274
Hudson Electric L. Co. v. Inhabitants &c., 163 Mass. 346, 716
Hudspeth v. State, 55 Ark. 323, 1473
Huels v. Hahn, 75 Wis. 468, 154
Huesing v. City of Rock Island, 128 Ill. 465, 581, 615
Huff v. City of Jacksonville, 39 Fla. 1, 1304
v. City of Lafayette, 108 Ind. 14, 1517
v. Cook, 44 Iowa 639, 185
v. Preuitt, 53 S. W. 844, 62, 63
Huffman v. Bayham Tp., 26 Ont. App. 514, 1376
v. Board &c., 23 Kan. 281, 182, 663, 743
v. San Joaquin Co., 21 Cal. 426, 788
Huffsmith v. People, 8 Colo. 175, 1400
Hugg v. City Council &c., 29 N. J. Eq. 6, 181, 664
Huggans v. Riley, 125 N. Y. 88, 1159, 1580
v. Riley, 51 Hun 501, 4 N. Y. S. 282, 1171, 1173
Huggins v. Hinson, 1 Phil. 126, 1727
Hughes v. Bingham, 135 N. Y. 347, 1563, 1574
v. Carl, 21 Ky. L. 6, 1504
v. City of Fond du Lac, 73 Wis. 380, 558, 1612, 1620
v. City of Momence, 163 Ill. 535, 1132, 1283, 1289
v. City of Momence, 164 Ill. 16, 1294
v. Monroe Co., 147 N. Y. 49, 786

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Hughes v. Overseers of Chatham, 5 Man. & G. 54, 128
v. Parker, 20 N. H. 58, 297
v. People, 8 Colo. 536, 607
v. Recorder's Court, 75 Mich. 574, 1403
v. School Dist., 72 Mo. 643, 92
Hughson v. Crane, 115 Cal. 404, 1030
Huidekoper v. Buchanan Co., 3 Dill. 175, 1001
v. City of Meadville, 83 Pa. St. 156, 1195
Hulaniski v. City of Ogden City, 20 Utah 233, 152
Huling v. Kaw Val. R. &c. Co., 130 U. S. 559, 694
Hull v. City of Chicago, 156 Ill. 384, 1147
v. Independent School Dist., 82 Iowa 686, 852, 1480, 1492
v. Marshall Co., 12 Iowa 142, 217
v. People, 170 Ill. 246, 1272
v. West Chicago Park Commissioners, 185 Ill. 150, 511, 1274, 1275
Hullin v. Second Municipality, 11 Rob. 97, 699, 700
Hultz v. Commonwealth, 3 Grant's Cas. 61, 310
Humboldt Co. v. Churchill Co. Commissioners, 6 Nev. 30, 426
v. Dinsmore, 75 Cal. 604, 1570, 1572
v. Lander Co., 24 Nev. 461, 1552
Humboldt Tp. v. Long, 92 U. S. 642, 998, 1001, 1009, 1012, 1018, 1023
Hume v. Conduitt, 76 Ind. 598, 1572
v. Mayor &c., 47 N. Y. 639, 680, 826, 1592, 1611, 1612
Humes v. City of Ft. Smith, 93 Fed. 857, 549, 1554
Humiston v. School Trustees, 7 Ill. App. 122, 1483
Humphreys v. City of Norfolk, 25 Gratt. 97, 1501, 1513
v. Mears, 1 M. & R. 187, 225
v. Woodstorm, 48 N. J. L. 588, 1106
Hungerman v. City of Wheeling, 46 W. Va. 761, 1333, 1374
Hunneman v. Fire District, 37 Vt. 40, 353, 362
v. Inhabitants &c., 10 Met. 454, 355, 356, 357, 359
Hunnerberg v. Village of Hyde Park, 130 Ill. 156, 1283
Hunnewell v. City of Charleston, 106 Mass. 350, 1722
Hunsaker v. Borden, 5 Cal. 288, 774
v. Wright, 30 Ill. 146, 1502
Hunt v. Chicago &c. R. Co., 121 Ill. 638, 1706
v. City of Dubuque, 96 Iowa 314, 1334
v. City of Jacksonville, 34 Fla. 504, 541
v. City of New York, 62 N. Y. S. 184, 1544
v. City of Oswego, 107 N. Y. 629, 936
v. City of Salem, 121 Mass. 294, 1595
v. City of Utica, 18 N. Y. 442, 722
v. Genet, 14 Daly 225, 1415
v. Gorton, 20 R. I. 163, 1157
v. Kansas &c. Bridge Co., 11 Kan. 412, 1576
v. School District, 14 Vt. 300, 346, 363, 1485
v. State, 22 Tex. App. 396, 986
v. Town of Pownal, 9 Vt. 411, 1600
Hunter, Appeal of, 71 Conn. 189, 1292, 1310
Hunter, In re, 163 N. Y. 542, 1315
Hunter v. Mobley, 26 S. C. 192, 920, 1662
v. Nolf, 71 Pa. St. 282, 633
v. Weston, 111 Ill. 184, 1374
Hupert v. Anderson, 35 Iowa 578, 701
Hurford v. City of Omaha, 4 Neb. 336, 680, 1254
Hurla v. City of Kansas City, 46 Kan. 738, 384, 393, 1515
Hurley v. Inhabitants &c., 88 Maine 293, 1336
Huron v. Bank, 57 U. S. App. 593, 876
Huron Water-Works Co. v. City of Huron, 7 S. D. 9, 609
Hursen v. City of Chicago, 85 Ill. App. 298, 1328
Hurtado v. People, 110 U. S. 516, 1715
Huse v. City of Lowell, 10 Allen 149, 1480
v. Glover, 119 U. S. 543, 1576
Hussner v. Brooklyn R. Co., 114 N. Y. 433, 1582
Huston v. City of Council Bluffs, 101 Iowa 33, 1342, 1343
v. Iowa Co., 43 Iowa 456, 776
Huston Overseers v. Jay Overseers, 9 Pa. Co. Ct. R. 412, 1049
Huston Tp. Poor Dist. v. Benzette Tp. Poor Dist., 135 Pa. St. 393, 1047
Hutchcraft v. Shrout's Heirs, 1 T. B. Mon. 206, 327
Hutcheson v. Storrie, 92 Tex. 685, 1243, 1282, 1297, 1506
v. Storrie, 48 S. W. 785, 477, 540, 1146, 1235, 1267, 1295
Hutchings v. Inhabitants &c., 90 Maine 131, 930, 1346
v. Scott, 9 N. J. L. 218, 1412
Hutchins v. City of Boston, 12 Allen 571, 1612
Hutchinson v. City of Parkersburg, 25 W. Va. 226, 678
v. City of Ypsilanti, 103 Mich. 12, 1336, 1344
v. Pratt, 11 Vt. 402, 351, 491, 1422
v. State, 39 N. J. Eq. 569, 1093
v. Town of Concord, 41 Vt. 271, 263, 820
v. Western &c. R. Co., 6 Heisk. 634, 7
Hutchinson Tp. v. Filk, 44 Minn. 536, 1125, 1126
Hutchisson v. City of Mt. Vernon, 40 Ill. App. 19, 1421
Huthsing v. Bousquet, 7 Fed. 833, 215
Hutson v. Mayor, 9 N. Y. 163, 222, 812, 816, 1159, 1592
Hutt v. City of Chicago, 132 Ill. 352, 1234
Hutton v. City of Camden, 39 N. J. L. 122, 1123
Hyatt v. Bates, 40 N. Y. 164, 556
Hyde v. Brush, 34 Conn. 454, 370
v. State, 52 Miss. 665, 183
v. Town of Jamaica, 27 Vt. 443, 777
Hydes v. Joyes, 4 Bush 464, 282, 509, 1198
Hydraulic Works Co. v. Orr, 83 Pa. St. 332, 794
Hyer v. City of Janesville, 101 Wis. 371, 1343
Hymes v. Aydelott, 26 Ind. 431, 698
Hynes v. City of Chicago, 175 Ill. 56, 511

I

Illinois &c. Canal Co. v. City of St. Louis, 2 Dill. 70, 579
Illinois Conf. Female College v. Cooper, 25 Ill. 133, 97, 468, 491

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Illinois &c. R. Co. v. Beers, 27 Ill. 185, 994
v. Chicago, 176 U. S. 646, 1814
v. City of Bloomington, 76 Ill. 447, 1379
v. City of Chicago, 141 Ill. 509, 1249, 1250
v. City of Chicago, 141 Ill. 586, 591, 1379
v. City of Decatur, 126 Ill. 92, 1250, 1256
v. City of Decatur, 154 Ill. 173, 1165, 1246, 1249
v. City of Galena, 40 Ill. 344, 517
v. City of Kankakee, 164 Ill. 608, 1249
v. City of Mattoon, 141 Ill. 32, 1249, 1250
v. City of Winona, 163 Ill. 288, 1282, 1310
v. Commissioners, 129 Ill. 477, 1246, 1249
v. Decatur, 147 U. S. 190, 1230, 1246, 1249, 1490
v. McLean Co., 17 Ill. 291, 1502
v. People, 161 Ill. 244, 470, 1289, 1309
v. Zimmer, 20 Ill. 654, 1813
Illinois Trust &c. Bank v. Arkansas City W. Co., 67 Fed. 196, 734, 739
v. City of Arkansas City, 76 Fed. 271, 547, 566, 672
Imlay v. Union Branch R. Co, 26 Conn. 249, 682
Incorporated Town of Scranton v. Danenbaum, 109 Iowa 95, 541
Incorporated Town of Spencer v. Andrew, 82 Iowa 14, 605
Incorporated Village of Inglehart v. Glenville, 19 Ohio C. C. 285, 932
Independent School Dist. v. Duser, 45 Iowa 391, 1472
v. Gookin, 72 Iowa 387, 1495, 1496
v. Kelley, 55 Iowa 568, 1480
v. McDonald, 39 Iowa 564, 324
v. Wirtner, 85 Iowa 387, 281
Indiana Bond Co. v. Shearer, 24 Ind. App. 622, 1304
Indiana Imp. Co. v. Wagner, 138 Ind. 658, 60
Indiana &c. R. Co. v. Oakes, 20 Ind. 9, 706
Indianapolis v. Emmelman, 108 Ind. 530, 795
v. Mansur, 15 Ind. 112, 1234
Indianapolis R. Co. v. Horst, 93 U. S. 291, 1016
Indianapolis &c. R. Co. v. Capital Pav. Co., 24 Ind. App. 114, 1151, 1243, 1245, 1249, 1251
Ingerman v. State, 128 Ind. 225, 1651, 1653
Inglis v. Sailors' Snug Harbor, 3 Peters 121, 132
Ingraham, In re, 64 N. Y. 310, 1204
Ingraham, Matter of, 4 Hun 495, 1564
v. Camden &c. Water Co., 82 Maine 335, 1457, 1458
Ingram v. McCombs, 17 Mo. 558, 323
Inhabitants &c., Petitioners, 6 Pick. 470, 1739
v. Bailey, 12 Maine 254, 1480
v. Bell, 9 Met. 499, 325
v. Benjamin, 125 Mass. 15, 325
v. Boston &c. R. Co., 23 Pick. 24, 1345
v. Brazer, 11 Mass. 447, 662
v. Camden Village Corporation, 77 Maine 530, 666
v. Chapin, 132 Mass. 470, 211
v. City of Malden, 141 Mass. 580, 1065
Inhabitants &c. v. City of Taunton, 152 Mass. 484, 1049
v. Cole, 3 Pick. 232, 294, 664
v. Commissioners, 26 Maine 206, 695, 696
v. Commissioners, 16 Pick. 572, 1500, 1501
v. Connecticut River R. Co., 4 Cush. 63, 679
v. Connecticut River R. Co., 144 Mass. 325, 1631
v. County Com'rs, 37 Maine 112, 696
v. County Com'rs, 49 Maine 143, 1321
v. County Com'rs, 5 Allen 13, 707
v. County Com'rs, 7 Cush. 394, 1572
v. County Com'rs, 12 Cush. 351, 696
v. County Com'rs, 4 Gray 500, 688, 1546
v. County Com'rs, 16 Gray 341, 707
v. County Com'rs, 1 Met. 336, 1739, 1743
v. County Com'rs, 3 Met. 202, 634
v. County Com'rs, 9 Met. 423, 1740
v. County Com'rs, 12 Met. 211, 1724
v. County Com'rs, 9 Pick. 46, 1739
v. County Com'rs, 10 Pick. 519, 1739
v. County Com'rs &c., 13 Pick. 60, 763, 1177
v. County Com'rs, 20 Pick. 71, 706, 1739
v. County Com'rs, 108 Mass. 68, 1557
v. County Com'rs, 117 Mass. 416, 1572
v. County Com'rs, 154 Mass. 424, 680
v. County Com'rs, 157 Mass. 94, 1739
v. County Com'rs, 31 N. E. 693, 1742
v. Cushman, 16 Mass. 393, 1068
v. Cutler, 114 Mass. 344, 1159
v. Delano, 1 Pick. 469, 1068
v. Dilley, 24 N. J. L. 209, 697
v. Dunning, 7 Mass. 445, 435
v. Easton &c. R. Co., 24 N. J. Eq. 217, 1109
v. Eaton, 12 Mass. 328, 1062
v. Eaton, 13 Mass. 371, 665
v. Estlow, 43 N. J. L. 13, 523
v. Farrar, 11 Allen 398, 1125
v. Field, 1 Conn. 279, 696, 1717
v. Fiske, 8 Cush. 264, 211
v. Fleming, 8 Gray 613, 309
v. Grubbs, 80 Mo. App. 433, 1304, 1311
v. Hackensack Imp. Com., 60 N. J. Eq. 229, 411
v. Hampden, 130 Mass. 528, 1577
v. Haughton, 7 Conn. 543, 311, 1015
v. Hazzard, 12 Cush. 112, 211, 319
v. Heard, 103 Mass. 543, 1727
v. Holbrook, 9 Allen 17, 745
v. Huntress, 53 Maine 89, 310
v. Hurd, 74 Maine 101, 1726
v. Inhabitants &c., 5 Conn. 384, 1048
v. Inhabitants &c., 2 Greenl. 28, 1538
v. Inhabitants &c., 3 Greenl. 136, 1048
v. Inhabitants &c., 3 Greenl. 223, 367
v. Inhabitants &c., 5 Greenl. 143, 1048, 1058
v. Inhabitants &c., 1 Maine 93, 1046
v. Inhabitants &c., 11 Maine 190, 1058

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Inhabitants &c. v. Inhabitants &c., 15 Maine 434, 1046
v. Inhabitants &c., 16 Maine 45, 866
v. Inhabitants &c., 17 Maine 117, 1046
v. Inhabitants &c., 21 Maine 58, 83, 384
v. Inhabitants &c., 26 Maine 167, 1048
v. Inhabitants &c., 32 Maine 60, 1048
v. Inhabitants &c., 36 Maine 235, 1046
v. Inhabitants &c., 36 Maine 390, 1048
v. Inhabitants &c., 42 Maine 463, 1415
v. Inhabitants &c., 47 Maine 481, 537
v. Inhabitants &c., 54 Maine 250, 866
v. Inhabitants &c., 55 Maine 55, 1058
v. Inhabitants &c., 58 Maine 353, 131
v. Inhabitants &c., 60 Maine 379, 1044
v. Inhabitants &c., 63 Maine 231, 672, 866
v. Inhabitants &c., 64 Maine 246, 1058
v. Inhabitants &c., 64 Maine 412, 1053
v. Inhabitants &c., 65 Maine 167, 866
v. Inhabitants &c., 66 Maine 78, 1058
v. Inhabitants &c., 70 Maine 114, 1053
v. Inhabitants &c., 79 Maine 473, 1058
v. Inhabitants &c., 82 Maine 524, 1043
v. Inhabitants &c., 83 Maine 75, 1044
v. Inhabitants &c., 83 Maine 219, 1036
v. Inhabitants &c., 3 Mass. 322, 1045
v. Inhabitants &c., 4 Mass. 123, 1042, 1046
v. Inhabitants &c., 4 Mass. 384, 430, 435, 1519
v. Inhabitants &c., 4 Mass. 676, 430
v. Inhabitants &c., 10 Mass. 411, 1065
v. Inhabitants &c., 12 Mass. 355, 1064
v. Inhabitants &c., 12 Mass. 400, 48, 86
v. Inhabitants &c., 13 Mass. 461, 1047, 1048
v. Inhabitants &c., 13 Mass. 547, 1042, 1043
v. Inhabitants &c., 14 Mass. 186, 1065
v. Inhabitants &c., 14 Mass. 216, 142
v. Inhabitants &c., 14 Mass. 253, 430
v. Inhabitants &c., 14 Mass. 384, 1047
v. Inhabitants &c., 15 Mass. 237, 1042
v. Inhabitants &c., 16 Mass. 16, 1519, 1537
v. Inhabitants &c., 16 Mass. 76, 1519, 1538
v. Inhabitants &c., 16 Mass. 86, 435
v. Inhabitants &c., 16 Mass. 102, 1052
Inhabitants &c. v. Inhabitants &c., 16 Mass. 396, 662
v. Inhabitants &c., 103 Mass. 358, 1045
v. Inhabitants &c., 108 Mass. 128, 1577
v. Inhabitants &c., 115 Mass. 336, 1045
v. Inhabitants &c., 119 Mass. 479, 1057
v. Inhabitants &c., 132 Mass. 312, 1575
v. Inhabitants &c., 138 Mass. 109, 1056
v. Inhabitants &c., 138 Mass. 256, 1048, 1052
v. Inhabitants &c., 139 Mass. 372, 1492
v. Inhabitants &c., 153 Mass. 192, 1057
v. Inhabitants &c., 155 Mass. 428, 1044, 1045
v. Inhabitants &c., 3 Met. 428, 1048
v. Inhabitants &c., 4 Met. 433, 1048
v. Inhabitants &c., 6 Met. 484, 430
v. Inhabitants &c., 10 Met. 115, 1041
v. Inhabitants &c., 12 Met. 35, 1048
v. Inhabitants &c., 13 Met. 192, 1036, 1047
v. Inhabitants &c., 1 Pick. 123, 866, 1036, 1047
v. Inhabitants &c., 4 Pick. 358, 1049, 1052
v. Inhabitants &c., 7 Pick. 42, 1046
v. Inhabitants &c., 10 Pick. 150, 1065
v. Inhabitants &c., 15 Pick. 19, 1065
v. Inhabitants &c., 18 Pick. 379, 1057
v. Inhabitants &c., 19 Pick. 389, 1042
v. Inhabitants &c., 19 Pick. 480, 1048
v. Inhabitants &c., 21 Pick. 233, 1048
v. Inhabitants &c.,21 Pick. 349, 662
v. Inhabitants &c., 23 Pick. 170, 1042
v. Inhabitants &c., 24 Pick. 166, 1042, 1047
v. Inhabitants &c., 50 N. J. L. 509, 431
v. Johnson, 53 Maine 437, 866
v. Kennard, 151 Mass. 563, 509
v. Leadbetter, 16 Maine 45, 659
v. Learned, 16 Mass. 215, 1062, 1063
v. Lord, 51 Maine 599, 1540
v. Lowell, 20 Maine 178, 659
v. Lowell, 70 Maine 437, 320
v. Lyons, 131 Mass. 328, 1063
v. Mayo, 109 Mass. 315, 673, 1125
v. Mayor &c., 116 Mass. 193, 1245
v. Mayor &c., 55 N. J. Eq. 505, 110
v. McEachron, 33 N. J. L. 339, 319
v. Morton, 146 Mass. 476, 1541
v. Morton, 25 Mo. 593, 692, 1205, 1206, 1499
v. Mullikin, 7 Gray 280, 1526
v. Norfolk, 117 Mass. 416, 696
v. North Yarmouth, 34 Maine 411, 90, 103
v. O'Connor, 53 Mo. 468, 537, 538
v. Paul, 173 Mass. 148, 609
v. Pease, 19 Maine 184, 363
v. Peirce, 122 Mass. 270, 357
v. Pennell, 69 Maine 357, 320
v. Railway Co., 4 Cush. 63, 634
v. Randall, 105 Mass. 295, 322
v. Reed, 152 Mass. 568, 1159
v. Searle, 127 Mass. 502, 362, 1540
v. Skillings, 45 Maine 133, 90, 103, 383, 435, 1538
v. Smith, 65 Maine 203, 345, 353, 355, 358, 361
v. Smith, 120 Mass. 96, 1100
v. Soule, 175 Mass. 400, 315
v. Spofford, 12 Maine 487, 343, 347

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Inhabitants &c. v. Stanley, 47 Maine 515, 325
v. Stearns, 21 Pick. 148, 155, 290, 341, 473, 1429, 1439
v. Stratton, 128 Mass. 137, 1063
v. Sudbury, 12 Pick. 1, 1047
v. Tripp, 81 Maine 24, 193
v. Turner, 14 Mass. 227, 1063
v. Weir, 9 Ind. 224, 251, 647
v. Welsh, 166 Mass. 133, 1340
v. Wiggins, 137 Mass, 94, 1742
v. Wood, 13 Mass. 193, 11, 50, 144, 662, 1526
Inkster v. Carver, 16 Mich. 484, 517
Inman v. Tripp, 11 R. I. 520, 1217
Inman Steamship Co. v. Tinker, 94 U. S. 238, 1101, 1537
Innes v. Wylie, 1 C. & K. 257, 207
Inos v. Winspear, 18 Cal. 397, 335
Insurance Co. v. Morse, 20 Wall. 445, 138
v. Sanders, 36 N. H. 252, 273
Intendant &c. v. Chandler, 6 Ala. 379, 543
v. Pippin, 31 Ala. 542, 1079, 1722
v. Sorrell, 1 Jones L. 49, 286, 289, 601
International Bank v. Franklin Co., 65 Mo. 105, 959
International &c. Ins. Co. v. Commissioners, 28 Barb. 318, 1500
Interstate &c. Co. v. City of New Orleans, 52 La. An. 1859, 223
Interstate Nat'l Bank v. Ferguson, 48 Kan. 732, 909
Interstate Vitrified Brick &c Co. v. Philadelphia, 164 Pa. St. 477, 753
Inwood v. State, 42 Ohio St. 186, 541
Iowa Brick Co. v. City of Des Moines, 111 Iowa 272, 744
Iowa &c. Co. v. Webster Co., 21 Iowa 221, 517
Iowa &c. Land Co. v. Carroll Co., 39 Iowa 151, 14
Iowa R. &c. Co. v. Sac Co., 39 Iowa 124, 1530
Ipsom v. Mississippi &c. R. Co., 36 Miss. 300, 698
Iredell v. Barbee, 9 Ired. L. 250, 312
Irion v. City of Saginaw, 120 Mich. 295, 1328
Iron R. Co. v. City of Ironton, 19 Ohio St. 299, 1323
Irvin v. Gregory, 86 Ga. 605, 844, 1486, 1492, 1493
v. New Orleans &c. R. Co., 94 Ill. 105, 1502
Irvine v. City of Chattanooga, 101 Tenn. 291, 785
v. Wood, 51 N. Y. 224, 1611
Irving v. Burgess &c., 194 Pa. St. 648, 1708
v. Ford, 65 Mich. 241, 1161, 1379
Irwin v. Exton, 125 Cal. 622, 1755
v. Lowe, 89 Ind. 540, 1540
v. Town of Ontario, 3 Fed. 49, 1001
Isbell v. New York &c. R. Co., 25 Conn. 556, 365
Iske v. City of Newton, 54 Iowa 586, 1712
Israel v. Jewett, 29 Iowa 475, 704
v. President &c., 2 Ill. 290, 527, 528
Ivanhoe v. City of Enterprise, 29 Or. 45, 1309
Ives v. City of Omaha, 70 N. W. 961, 1140, 1141
v. Irey, 51 Neb. 136, 1153
Ivinson v. Hance, 1 Wyo. Ter. 270, 835

J

Jack v. Moore, 66 Ala. 184. 663, 664
v. Welennett, 115 Ill. 105, 1498
Jacks v. City of Helena, 41 Ark. 213, 990
Jackson, Ex parte, 45 Ark. 158, 1074
v. Burns, 3 Binn. 75, 132
v. Chicago &c. R. Co., 31 Iowa 176, 1109
v. City of Greenville, 72 Miss. 220, 1347
v. Collins, 16 N. Y. S. 651, 41 N. Y. St. 590, 281, 934
v. Edwards, 7 Paige Ch. 386, 693
v. Fitzsimmons, 10 Wend. 9, 134
v. Green, 7 Wend. 333, 134
v. Hartwell, 8 Johns. 422, 563
v. Lunn, 3 Johns. Cas. 109, 132
v. Norris, 72 Ill. 364, 1701
v. People, 9 Mich. 111, 543, 1724
v. Rankin, 67 Wis. 285, 696, 1572
v. Rutland &c. R. Co., 25 Vt. 150, 675
v. Simonton, 4 Cranch C. C. 255, 313
v. Smith, 120 Ind. 520, 220, 1201
v. State, 104 Ind, 516, 1256
v. Town of Bellevieu, 30 Wis. 250, 1332
v. White, 20 Johns. 313, 132
v. Young, 5 Cow. 269, 1569
Jackson Co. v. Waldo, 85 Mo. 637, 1568
Jackson &c. R. Co. v. Interstate &c. R. Co., 24 Fed. 306, 566, 1352
Jackson School Tp. v. Hadley, 59 Ind. 534, 626
Jackson Tp. v. Wagner, 127 Pa. St. 184, 1586, 1600
Jacksonville v. Ledwith, 26 Fla. 163, 1402
Jacksonville Elec. Light Co. v. City of Jacksonville, 36 Fla. 229, 573
Jacksonville R. Co. v. City of Jacksonville, 114 Ill. 562, 550, 1142, 1250
Jacksonville &c. R. Co. v. Virden, 104 Ill. 339, 987
v. Walsh, 106 Ill. 253, 701
Jacobs, In re, 98 N. Y. 98, 1382
v. City of Chicago, 178 Ill. 560, 1153, 1154
v. Hamilton Co., 1 Bond 500, 779
v. Inhabitants &c., 16 Maine 187, 1633
Jacquemin v. Andrews, 40 Mo. App. 507, 914
James v. City of Darlington, 71 Wis. 173, 587, 621
v. City of Louisville, 19 Ky. L. 447, 1296
v. City of Portage, 48 Wis. 677, 1597
v. City of Seattle, 22 Wash. 654, 180, 955
v. Pine Bluff, 49 Ark. 199, 1258
v. Sammis, 132 N. Y. 239, 1567
James Co. v. Hamilton Co., 89 Tenn. 237, 417
Jameson v. People, 16 Ill. 257, 49, 50, 64, 65, 86, 87
Jamison v. City of Springfield, 53 Mo. 224, 706
Janeway v. City of Duluth, 65 Minn. 292, 572
Jansen v. City of Atchison, 16 Kan. 358, 1588
Jardine v. Mayor &c., 11 Daly 116, 1187
Jarrett v. City of Chicago, 181 Ill. 242, 512
Jarrolt v. Moberly, 103 U. S. 580, 996
Jarvis v. Dean, 3 Bing. 447, 571, 1559
Jasper Co. v. Ballou, 103 U. S. 745, 992, 1020, 1022, 1023, 1029

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Jasper Co. v. Osborn, 59 Iowa 208, 1063
Jebb v. Sexton, 84 Ill. App. 45, 1284
Jeffers v. Johnson, 18 N. J. L. 382, 322
v. Lawrence, 42 Iowa 498, 1533
Jefferson v. Cowan, 54 Mo. 234, 1257
v. Edwards, 37 Mo. App. 617, 1736
v. Hartley, 81 Ga. 716, 332
Jefferson Co. v. Slagle, 66 Pa. St. 202, 284
Jefferson &c. R. Co. v. Hazem, 7 La. An. 182, 1448
Jefferson School Tp. v. Litton, 116 Ind. 467, 857, 922, 1495
Jeffersonville v. Myers, 2 Ind. App. 532, 1210, 1221, 1741
Jeffersonville &c. R. Co. v. Hendricks, 41 Ind. 48, 137
Jeffries v. Lawrence, 42 Iowa 498, 982, 996, 1542
Jefts v. York, 10 Cush. 392, 217
Jegglin v. Roeder, 79 Mo. App. 428, 1348
Jeliff v. City of Newark, 48 N. J. L. 101, 1233
Jelly v. Dills, 27 W. Va. 267, 1399
Jenal v. Green Island Draining Co., 12 Neb. 163, 689
Jenkins v. City of Cheyenne, 1 Wyom. Ter. 287, 535
v. Inhabitants &c., 103 Mass. 94, 980
v. Lemonds, 29 Ind. 294, 331, 332
v. Mayor &c., 35 Ga. 145, 497, 1412
v. School Dist., 39 Maine 220, 294
v. Stetler, 118 Ind. 275, 1163, 1255
v. Waldron, 11 Johns. 114, 221
Jenne v. Sutton, 43 N. J. L. 257, 807
Jenner v. Joliffe, 9 Johns. 381, 222
Jennings v. Le Breton, 80 Cal. 8, 268
v. Van Shaick, 108 N. Y. 530, 1349
v. Wood, 20 Ohio 261, 228
Jensen, In re, 59 N. Y. S. 653, 873
v. Board &c., 47 Wis. 298, 1538
v. City of Waltham, 166 Mass. 344, 792
Jernee v. Board &c., 52 N. J. L. 553, 1577
Jerome v. Ross, 7 Johns. Ch. 315, 674
Jersey City v. Qualfe, 2 Dutch. 63, 175
Jersey City &c. R. Co. v. Jersey City &c. R. Co., 20 N. J. Eq. 61, 590
Jessem v. Pierce, 25 Ind. App. 222, 1310
Jessup v. United States, 106 U. S. 147, 311
Jester v. Overseers, 11 Pa. St. 540, 1062
Jewell v. Mills, 3 Bush 62, 332
Jewett v. City of New Haven, 38 Conn. 368, 264, 820, 1097
Jewhurst v. City of Syracuse, 108 N. Y. 303, 1596, 1597
Jex v. Mayor &c., 103 N. Y. 536, 1205, 1264
Jimison v. Adams Co., 130 Ill. 558, 1472
Jobson v. Bridges, 84 Va. 298, 154, 163
John v. Cincinnati R. Co., 35 Ind. 539, 983
John Hancock &c. Ins. Co. v. City of Huron, 80 Fed. 652, 1030
v. City of Huron, 100 Fed. 1001, 875
Johns v. County Com'rs, 28 Fla. 626, 955
v. People, 25 Mich. 499, 195
Johnson v. Campbell, 49 Ill. 316, 624
v. Campbell, 39 Tex. 83, 960
v. City Council &c., 2 Or. 327, 1501
v. City Council &c., 11 Tex. Civ. App. 469, 204
v. City of Kansas City, 78 Mo. 661, 1541
v. City of Lexington, 14 B. Mon. 648, 1501, 1503
v. City of Milwaukee, 40 Wis. 315, 559, 1702
Johnson v. City of Parkersburg, 16 W. Va. 402, 1209
v. City of Rock Hill, 57 S. C. 371, 750, 1449
v. City of Troy, 48 N. Y. S. 998, 1366
v. City of Winfield, 48 Kan. 129, 539
v. City of Worcester, 172 Mass. 122, 1326
v. Commonwealth, 7 Dana 338, 1511
v. District of Columbia, 1 Mackey 427, 1207
v. Drummond, 20 Gratt. 417, 1502
v. Dunn, 134 Mass. 522, 335
v. Harvey, 84 N. Y. 363, 312
v. Lewis, 13 Conn. 303, 1095
v. Mann, 77 Va. 265, 313
v. Martin, 68 Wis. 330, 1423, 1424
v. Mayor &c., 46 Ga. 80, 1417
v. Mayor &c., 62 Ga. 645, 1520, 1532
v. People, 177 Ill. 64, 1303
v. Philadelphia, 60 Pa. St. 445, 517, 1406
v. Rankin, 70 N. C. 550, 673
v. Sanitary Dist., 163 Ill. 285, 753
v. Santa Clara Co., 28 Cal. 545, 638
v. School Dist., 67 Mo. 319, 1171
v. Simonton, 43 Cal. 242, 1079
v. Smith, 64 Ind. 275, 445
v. Stark Co., 24 Ill. 75, 624, 1013, 1016
v. State, 116 Ind. 374, 1201
v. State, 94 Tenn. 499, 181
v. Wakulla Co., 28 Fla. 720, 934
v. Wilson, 2 N. H. 202, 1171
Johnson City v. Wolfe, 103 Tenn. 277, 789
Johnson Home &c. v. Village of Seneca Falls, 55 N. Y. S. 803, 1504
Johnson School Tp. v. Citizens' Bank, 81 Ind. 515, 857, 863
Johnston v. District of Columbia, 118 U. S. 19, 263, 787, 821
v. Moorman, 80 Va. 131, 221, 334
v. People's Natural Gas Co., 5 Cent. R. 564, 689
v. Wilson, 2 N. H. 202, 198
Joint Free High School Dist. v. Town of Green Grove, 77 Wis. 532, 844
Jonas v. City of Cincinnati, 18 Ohio 318, 1533
Jones v. Blanton, 6 Ired. Eq. 115, 327
v. Board &c., 104 Mass. 461, 1234, 1266
v. Board &c., 88 Mich. 371, 1479
v. Borough of Bangor, 144 Pa. St. 638, 802, 1220, 1603
v. City of Albany, 151 N. Y. 223, 930
v. City of Albany, 17 N. Y. S. 232, 937
v. City of Boston, 104 Mass. 75, 1612
v. City of Camden, 44 S. C. 319, 1032
v. City of Clinton, 100 Iowa 333, 796
v. City of Greenboro, 124 N. C. 310, 1334, 1360
v. City of New Haven, 34 Conn. 1, 814, 1594
v. City of New York, 62 N. Y. S. 284, 721
v. City of Portland, 35 Or. 512, 721, 955
v. City of Seattle, 19 Wash. 669, 752, 1141
v. City of Troy, 4 N. Y. S. 792, 1607
v. Commissioners, 107 N. C. 248, 984
v. Davis, 35 Wis. 376, 1566

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Jones v. Erie &c. R. Co., 169 Pa. St. 333, 1350
v. Firemen's &c. Ins. Co., 2 Daly 307, 466
v. Foster, 59 N. Y. S. 738, 505
v. Gridley, 20 Kan. 584, 368
v. Hays, 3 Ired. Eq. 502, 327
v. Housatonic R. Co., 107 Mass. 261, 1613
v. Inhabitants &c., 66 Maine 585, 343
v. Inhabitants &c., 9 Pick. 146, 294
v. Kolb, 56 Wis. 263, 1532
v. Le Tombe, 3 Dallas 384, 215
v. Loving, 55 Miss. 109, 218
v. Mayor &c., 8 M. & W. 605, 174
v. Mayor &c., 25 Ga. 610, 982
v. Mayor &c., 37 Hun 513, 1265
v. Mayor &c., 9 N. Y. St. 247, 781
v. McAlpine, 64 Ala. 511, 521
v. New Orleans &c. R. Co., 70 Ala. 227, 701
v. Pendleton Co. Court, 19 S. W. 740, 842, 1039
v. People, 19 Ill. App. 300, 332
v. Savage, 53 N. Y. S. 308, 717, 747
v. Town of Lind, 79 Wis. 64, 1041
v. Town of Tonawanda, 158 N. Y. 438, 1142, 1287
v. Williams, 11 M. & W. 176, 1115
Jones Co. v. Perry, 26 Ind. App. 554, 1309
Jonesboro v. Cairo &c. R. Co., 110 U. S. 192, 992
Jonesboro Co. v. Baldwin, 57 Ind. 86, 1639
Jordan v. City of Benwood, 42 W. Va. 312, 791, 1377
v. Hanson, 49 N. H. 199, 334
v. Osceola Co., 59 Iowa 388, 840
v. School Dist., 38 Maine 164, 358, 365, 1424
Joslyn v. City of Detroit, 74 Mich. 459, 1325, 1609
Josselyn v. Stone, 28 Miss. 753, 1734
Joyes v. Shadburn (Ky.), 13 S. W. 361, 1271
Joyner v. Inhabitants &c., 3 Cush. 567, 245
Judd v. Thompson, 125 Mass. 553, 365
v. Town of Fox Lake, 28 Wis. 583, 652
Judevine v. Town of Hardwick, 49 Vt. 180, 871
Judge v. City of Meriden, 38 Conn. 90, 820, 1207
Judge of Probate v. Webster, 46 N. H. 518, 1055
Judges &c. v. Taylor, 8 Bush 206, 1543
Judkins v. Hill, 50 N. H. 140, 155
Judson v. Reardon, 16 Minn. 431, 493
v. Smith, 104 Mo. 61, 908
Juker v. Commonwealth, 20 Pa. St. 484, 371
Julia Bldg. Ass'n v. Bell Tel. Co., 88 Mo. 258, 681
Junction R. Co. v. City of Philadelphia, 88 Pa. St. 424, 1251
Jung v. City of Stevens Point, 74 Wis. 547, 1632
Jussen v. Board &c., 95 Ind. 567, 277, 987
Justice v. City of Logansport, 101 Ind. 326, 1544
Justices v. Smith, 2 J. J. Marsh. 472, 312
Justices &c. v. Paris &c. Tpk. Co., 11 B. Mon. 143, 1529
Jutte & Foley Co. v. City of Altoona, 94 Fed. 61, 873

K

Kahn v. Board &c., 79 Cal. 388, 1137
v. Sutro, 114 Cal. 316, 55, 82
Kaime v. Harty, 4 Mo. App. 357, 521
Kaine v. Commonwealth, 101 Pa. St. 490, 1494
Kaiser v. St. Paul &c. R. Co., 22 Minn. 149, 682, 1582
Kalbrier v. Leonard, 34 Ind. 497, 1516
Kamp v. People, 141 Ill. 9, 1688
Kane v. City of Charleston, 161 Ill. 179, 1021
v. City of Fond du Lac, 40 Wis. 495, 662
v. City of Troy, 1 N. Y. S. 536, 1609
v. City of Yonkers, 60 N. Y. S. 216, 43 App. Div. 599, 1794, 1801, 1802
v. Commissioners, 86 N. C. 8, 1230
v. Footh, 70 Ill. 587, 1668
v. Independent School Dist., 82 Iowa 5, 890
v. Mayor &c., 15 Md. 240, 688
v. New York El. R. Co., 125 N. Y. 164, 1581
v. Parker, 4 Wis. 123, 423
v. Philadelphia, 196 Pa. St. 502, 1801
Kankakee Co. v. Etna L. Ins. Co., 106 U. S. 668, 1013
Kanouse v. Town of Lexington, 12 Ill. App. 318, 530
Kansas City v. Bacon, 147 Mo. 259, 88, 551, 1308
v. Bacon, 157 Mo. 450, 1272, 1279, 1772
v. Corrigan, 86 Mo. 67, 468, 492
v. Duncan, 135 Mo. 571, 551, 1778
v. Hallett, 59 Mo. App. 160, 499
v. Marsh Oil Co., 140 Mo. 458, 89, 110, 1146
v. McDonald, 80 Mo. App. 444, 754
v. Trieb, 76 Mo. App. 478, 501
v. Ward, 134 Mo. 172, 110, 879
Kansas City Grading Co. v. Holden, 107 Mo. 305, 802
Kansas City &c. R. Co. v. Albright, 33 Kan. 211, 1535
v. Alderman, 47 Mo. 349, 990, 995
v. Campbell, 62 Mo. 585, 694
v. Fitzsimmons, 22 Kan. 686, 794
v. Rich Tp., 45 Kan. 275, 985, 988
Kansas Pac. R. Co. v. Commissioners &c., 16 Kan. 587, 245, 247, 1551
Kansas Town Co. v. City of Argentine, 59 Kan. 779, 1131, 1293
Kaseman v. Borough of Sunbury, 197 Pa. St. 162, 1326
Kassell v. Mayor &c., 109 Ga. 491, 498
Kassman v. City of St. Louis, 153 Mo. 293, 1374
Katzenberger v. Aberdeen, 16 Fed. 745, 982
v. Aberdeen, 121 U. S. 172, 643, 994
v. Lawo, 90 Tenn. 235, 1357
Kavanagh v. City of Brooklyn, 38 Barb. 232, 820, 1586
v. Mobile &c. R. Co., 78 Ga. 271, 586, 590
Kaveny v. City of Troy, 108 N. Y. 571, 1604, 1605, 1606, 1607
Kayser v. Bremen, 16 Mo. 88, 64
Kaysville City v. Ellison, 18 Utah 163, 1549
Kean v. Rizer, 90 Md. 507, 1658
Keane v. Cushing, 15 Mo. App. 96, 479
v. Village of Waterford, 2 N. Y. S. 182, 1605
Kearney v. Andrews, 10 N. J. Eq. 70, 313
v. City of Covington, 1 Met. 339, 1306, 1748

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Kearney Co. v. Tuttle, 16 Neb. 34, 907
Keasy v. City of Louisville, 4 Dana 154, 680
Keating v. Cincinnati, 38 Ohio St. 141, 680, 1602
v. City of Kansas, 84 Mo. 415, 646
v. McDonald, 73 Conn. 125, 1808
Keator v. Dalton, 62 N. Y. S. 878, 712, 1698, 1788
Keck v. City of Cincinnati, 6 Ohio Dec. 97, 580
Keefer v. Schwartz, 47 Pa. St. 503, 1058
Keehn v. McGillicuddy, 15 Ind. App. 580, 1379, 1380
Keeler v. Frost, 22 Barb. 400, 294
v. Milledge, 24 N. J. L. 142, 536, 537, 1419
Keenan v. Cook, 12 R. I. 52, 221
Keene &c. Saving Bank v. Lyon Co., 90 Fed. 523, 878
Keeney, Ex parte, 84 Cal. 304, 1086
v. Jersey City, 47 N. J. L. 449, 260
Keese v. City of Denver, 10 Colo. 112, 1236, 1270, 1288
Keffe v. Milwaukee &c. R. Co., 21 Minn. 207, 794
Kehn v. State, 93 N. Y. 291, 174, 175
Kehrer v. Richmond, 81 Va. 745, 1602
Kehrig v. Peters, 41 Mich. 475, 1509
Keifer v. City of Bridgeport, 68 Conn. 401, 1157
Keiffer v. Ehler, 18 Pa. St. 388, 1026
Keihl v. City of South Bend, 76 Fed. 921, 877
Keil v. City of St. Paul, 47 Minn. 288, 1219
Keith v. Bingham, 100 Mo. 300, 1206, 1253
v. City of Philadelphia, 126 Pa. St. 515, 1271
v. Howard, 24 Pick. 292, 222
v. Inhabitants &c., 2 Allen 552, 1613
Kellar v. Savage, 17 Maine 444, 348, 352, 364
Keller v. People, 160 Ill. 179, 1237, 1278, 1280
v. State, 11 Md. 525, 1537
v. Wilson, 90 Ky. 350, 564
Kelley v. City of Columbus, 41 Ohio St. 263, 1597
v. City of Madison, 43 Wis. 638, 828, 942
v. City of Pittsburgh, 85 Pa. St. 170, 1516, 1518
v. Cook, 21 R. I. 29, 804, 805
v. Kennard, 60 N. H. 1, 472, 1155
v. Mayor &c., 4 Hill 263, 260
v. Milan, 127 U. S. 139, 562, 637
974, 981, 984, 993, 996, 1523, 1531
Kellinger v. Forty-second St. R. Co., 50 N. Y. 206, 1317, 1582
Kellogg v. Carrico, 47 Mo. 157, 486
v. Chicago &c. R. Co., 26 Wis. 223, 1109
v. Ely, 15 Ohio St. 64, 1723
v. Inhabitants &c., 4 Gray 65, 1597
v. Malin, 50 Mo. 496, 675
v. Mayor &c., 44 N. Y. S. 39, 928
Kellow v. City of Scranton, 195 Pa. St. 134, 1339
Kelly v. City of Chicago, 62 Ill. 279, 753, 1687
v. City of Cleveland, 34 Ohio St. 468, 1252
v. City of Minneapolis, 63 Minn. 125, 876
v. City of Minneapolis, 77 Minn. 76, 930
v. City of Pittsburg, 85 Pa. St. 170, 405
v. Corporation &c. of Toronto, 23 U. C. Q. B. 425, 1403
Kelly v. Gahn, 112 Ill. 23, 153
v. Harrison, 2 Johns. Cas. 29, 132
v. Mayor &c., 4 Hill 263, 977
v. Mayor &c., 11 N. Y. 432, 1591
v. Mayor &c., 53 Md. 134, 1730
v. McCormick, 28 N. Y. 318, 1014
v. Meeks, 87 Mo. 396, 384, 393, 400
v. Moon, 51 Ala. 364, 335
v. Multnomah Co., 18 Or. 356, 1072
v. New York &c. R. Co., 9 N. Y. S. 90, 1631
v. Owen, 7 Wall. 496, 132
v. Pittsburg, 104 U. S. 78, 11, 1536, 1714
v. Southern R. Co., 28 Minn. 98, 1627
v. Town of Fond du Lac, 31 Wis. 179, 1597
v. York, 59 N. Y. S. 30, 1829
Kelly Tp. v. Union Tp., 5 W. & S. 535, 1043
Kelsey v. Glover, 15 Vt. 708, 1112
v. King, 32 Barb. 410, 684
v. King, 1 Trans. App. 133, 1565
Kelso v. City of Boston, 120 Mass. 297, 1724
Kemp v. Neville, 10 C. B. 523, 221
Kemper v. Campbell, 45 Kan. 529, 1160
v. City of Louisville, 14 Bush 87, 1418
v. King, 11 Mo. App. 116, 1199, 1234
Kempner v. Galveston Co., 73 Tex. 216, 907
Kenady v. City of Lawrence, 128 Mass. 318, 1622
Kendall v. City Council &c., 47 N. J. L. 64, 1692
v. City of Albia, 73 Iowa 241, 1630, 1635, 1802
v. Post, 8 Or. 141, 698
v. Powers, 4 Met. 553, 335
v. Stokes, 3 How. 87, 230
Kenfield v. Irwin, 52 Cal. 164, 368
Kennard v. Cass Co., 3 Dill. 147, 1740
Kennedy v. Board &c., 82 Cal. 483, 1492, 1659
v. Board &c., 2 Pa. St. 366, 1116
v. City of New York, 54 N. Y. S. 261, 930
v. City of Sacramento, 19 Fed. 580, 90, 103, 1526
v. City of Troy, 77 N. Y. 493, 1197, 1287, 1724
v. City of Troy, 14 Hun 308, 1717
v. Corporation of Washington, 3 Cr. C. C. 595, 580
v. Jones, 11 Ala. 63, 1214
v. Le Van, 23 Minn. 513, 1559
v. Newman, 1 Sandf. 187, 1422
v. Phelps, 10 La. An. 227, 607, 1081, 1093, 1121
v. Trustees &c., 8 Dana 50, 629
Kennett Square v. Entriken, 7 Pa. Co. Ct. R. 469, 1271
Kenney v. Goergen, 36 Minn. 190, 198
Kennicott v. Supervisors, 83 U. S. 452, 1001, 1005
Kennison v. Inhabitants &c., 146 Mass. 467, 1781
Kensington v. Glenat, 1 Phila. 393, 528
Kensington Electric Co. v. City of Philadelphia, 187 Pa. St. 446, 518, 955
Kent v. Town of Lincoln, 32 Vt. 591, 1617
v. Village of Enosburg Falls, 71 Vt. 255, 1236, 1548
v. Village of North Tarrytown, 56 N. Y. S. 885, 1753
Kents v. Village of North Tarrytown, 64 N. Y. S. 178, 715

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Kentucky Lead &c. Co. v. New Albany Water-Works, 62 Ind. 63, 1512
Kentucky Public Elev. Co. v. Colston, 56 S. W. 981, 1307
Kenworthy v. Ironton, 41 Wis. 647, 8
Kenyon v. City of Spokane, 17 Wash. 57, 955
Keokuk &c. Bridge Co. v. People, 161 Ill. 132, 1554
Keokuk &c. Co. v. City of Quincy, 81 Ill. 422, 517
Keough v. Board &c., 156 Mass. 403, 1693
v. City of St. Paul, 66 Minn. 114, 1152
Kepner v. Commonwealth, 40 Pa. St. 124, 465, 480
Kernochan v. New York El. R. Co., 128 N. Y. 559, 1582
Kerns v. Schoonmaker, 4 Ohio 331, 335
Kerr v. Central Board &c., 25 Pitts. Leg. J. 54, 752
v. City of Bellefontaine, 59 Ohio St. 446, 711, 737, 744
v. City of Corsicana, 89 Tex. 461, 1286
v. City of Corsicana, 35 S. W. 694, 1701, 1709
v. Hitt, 75 Ill. 51, 486
v. Jones, 19 Ind. 351, 185, 206
v. Seaver, 11 Allen 151, 1751
v. Trego, 47 Pa. St. 292, 287
Kersten v. City of Milwaukee, 106 Wis. 200, 1236, 1243, 1279, 1285
Kesler v. Smith, 66 N. C. 154, 524
Ketcham v. Wagner, 90 Mich. 271, 428
Ketchum v. City of Buffalo, 14 N. Y. 356, 576, 658, 977
v. Duncan, 96 U. S. 659, 1019
Kettering v. City of Jacksonville, 50 Ill. 39, 64, 520, 1691
Keyes v. City of Cedar Falls, 107 Iowa 509, 1327, 1335
v. Inhabitants &c., 17 Pick. 273, 294
v. Village of Marcellus, 50 Mich. 439, 1587, 1597
Keymer, In re, 148 N. Y. 219, 1828
Keys v. Marin Co., 42 Cal. 252, 706
Keyser v. McKissan, 2 Rawle 139, 198
v. School Dist., 35 N. H. 477, 295, 644
Khron v. Brock, 144 Mass. 516, 811
Khroop v. Forman, 31 Mich. 144, 1572
Kick v. Merry, 23 Mo. 72, 671
Kidder v. City of Peoria, 29 Ill. 77, 692
v. Inhabitants &c., 7 Gray 104, 1601
Kieffer v. Hummelstown Borough, 151 Pa. St. 304, 1600
Kielley v. Carson, 4 Moo. P. C. 63, 298
Kierman, In re, 62 N. Y. 457, 1257, 1258
v. Mayor &c., 43 N. Y. S. 538, 1339
Kies v. City of Erie, 135 Pa. St. 144, 797
v. City of Erie, 169 Pa. St. 598, 790
Kilchli v. Minnesota &c. Elec. Co., 58 Minn. 418, 730
Kilbourne v. St. John, 59 N. Y. 21, 1699
v. Thompson, 103 U. S. 168, 205
Kiley v. City of Kansas City, 69 Mo. 102, 1616
v. City of Kansas City, 87 Mo. 103, 8, 265, 820
v. Cranor, 51 Mo. 541, 1427
v. Oppenheimer, 55 Mo. 374, 1131
Kilgore v. Commonwealth, 94 Pa. St. 495, 106
Kilham v. Ward, 2 Mass. 236, 132
Killion v. Van Patten, 42 Kan. 295, 172
Kilpatrick v. Smith, 77 Va. 347, 313
Kimball v. Alcorn, 45 Miss. 151, 197
v. Board &c., 46 Cal. 19, 698
v. City of Boston, 1 Allen 417, 798
Kimball v. City of Cedar Rapids, 100 Fed. 802, 724
v. City of Peoria, 140 Ill. 157, 1143
v. Corn Exch. &c. Bank, 1 Ill. App. 209, 1551, 1727
v. Cushman, 103 Mass. 194, 1779
v. Lamprey, 19 N. H. 215, 1429
v. Marshall, 44 N. H. 465, 273, 279, 305, 354
v. Merchants' &c. Co., 98 Ill. 611, 1699, 1721
v. Olmstead, 20 Wash. 629, 209, 1686, 1687
v. People, 160 Ill. 653, 1289
v. Rosendale, 42 Wis. 407, 54, 992
v. School Dist., 28 Vt. 8, 1480
Kimble v. City of Peoria, 140 Ill. 157, 483, 511, 1259, 1267
Kimmel, In re, 41 Fed. 775, 1399
Kimmish v. Ball, 129 U. S. 217, 137
Kincaid v. Hardin Co., 53 Iowa 430, 9, 142, 775, 776, 1076
King v. Beeston, 3 T. R. 592, 295
v. Bellringer, 4 T. R. 810, 473
v. Buller, 8 East 389, 305
v. City of Buffalo, 10 N. Y. 564, 170
v. City of Chicago, 111 Ill. 63, 923
v. City of Kansas City, 58 Kan. 334, 1378
v. City of Madison, 17 Ind. 48, 1511
v. City of Oshkosh, 75 Wis. 517, 827, 1609
v. City of Portland, 2 Or. 146, 1268, 1269
v. Commissioners, 8 B. & C. 355, 801
v. Davenport, 98 Ill. 305, 673, 1391, 1707
v. Granger, 21 R. I. 93, 1781
v. Harris, 1 B. & Ad. 936, 207
v. Inhabitants &c., 5 B. & Ad. 469, 1559
v. Inhabitants &c., 1 East 13, 345
v. Inhabitants &c., 4 T. R. 591, 667
v. Inhabitants &c., 6 T. R. 534, 345
v. Ireland, 68 Tex. 682, 311
v. Lamb, 117 Cal. 401, 1140
v. Mahaska Co., 75 Iowa 329, 633, 648
v. Market St. Com'rs, 4 B. & Ad. 333, 699
v. Mayor &c., 6 Ad. & El. 349, 1657
v. Mayor &c., 2 T. R. 259, 1657, 1691
v. Mayor &c., 4 T. R. 699, 1657
v. McDrew, 31 Ill. 418, 1743
v. Miller, 6 T. R. 268, 305
v. Minneapolis Union R. Co., 32 Minn. 224, 701, 702, 703, 1222
v. Morris &c. R. Co., 18 N. J. Eq. 397, 1109
v. Nichols, 16 Ohio St. 80, 318
v. Parry, 14 East 549, 378
v. President &c., 3 Ill. 305, 527
v. Russell, 6 East 427, 1610
v. Theodorick, 8 East 543, 344
v. Tizzard, 9 B. & C. 418, 185
v. Williams, 2 Man. & S. 141, 305
v. Wilson, 1 Dill. C. C. 555, 1717
King Co. v. Collins, 1 Wash. 469, 1052
Kinghorn v. Corporation &c. of Kingston, 26 Up. Can. Q. B. 130, 540
Kingman v. City of Brockton, 153 Mass. 255, 559, 917
v. Inhabitants &c., 2 Cush. 426, 644, 1480
Kingman &c., Petitioners, 153 Mass. 566, 1252
Kingsbury v. Inhabitants &c., 13 Allen 186, 1618
v. School Dist., 12 Met. 99, 294, 343, 362, 1485

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Kingsland v. Mayor &c., 5 Daly 448, 894
v. Mayor &c., 110 N. Y. 569, 620
Kingsley v. Bowman, 53 N. Y. S. 426, 751
v. Norris, 60 N. H. 131, 715
Kingston &c. Ins. Co. v. Clark, 33 Barb. 196, 326
Kinkaid's Appeal, 66 Pa. St. 411, 1086
Kinmundy v. Mahan, 72 Ill. 462, 1539
Kinnare v. City of Chicago, 171 Ill. 332, 82, 771, 792
Kinneen v. Wells, 144 Mass. 497, 369, 370, 371
Kinney v. City of Tekamah, 30 Neb. 605, 1338
v. City of Troy, 108 N. Y. 567, 1604
Kinsey v. Pulaski Co., 2 Dill. 253, 836
Kinsley v. City of Chicago, 124 Ill. 359, 469, 601, 604, 1387, 1399
Kip v. City of Buffalo, 7 N. Y. S. 685, 175, 190
v. Mayor &c., 26 N. J. L. 298, 100, 500, 536, 537, 1507, 1509
Kipley v. Luthardt, 178 Ill. 525, 1824, 1825
Kirby v. Boylston Mkt. Ass'n, 14 Gray 249, 1588
v. Shaw, 19 Pa. 258, 81, 1514, 1516, 1520
Kirchenor v. Flint, 11 N. Y. S. 741, 1417
Kirchman v. People, 159 Ill. 265, 1289
v. West &c. R. Co., 58 Ill. App. 515, 1135
Kirk v. Brazos Co., 73 Tex. 56, 1064
v. Norvill, 1 T. R. 118, 532
Kirkendall v. City of Omaha, 39 Neb. 1, 1211
Kirkham v. Russell, 76 Va. 956, 500
Kirkpatrick v. Commissioners, 42 N. J. L. 510, 1198
v. Taylor, 118 Ind. 329, 708
Kirkwood v. Soto, 87 Cal. 394, 173
Kirtland v. Hotchkiss, 100 U. S. 491, 138, 1500, 1501
Kisler v. Cameron, 39 Ind. 488, 381
Kissell v. Anderson, 73 Ind. 485, 1095
Kistner v. City of Indianapolis, 100 Ind. 210, 264
Kitchel v. Board &c., 123 Ind. 540, 555
Kitchell v. Manchester &c. R. Co., 79 Mo. App. 340, 1813
Kitson v. Mayor &c., 26 Mich. 325, 1507
Kittinger v. Buffalo Traction Co., 160 N. Y. 377, 273, 482, 506
v. Monroe School Tp., 3 Ind. App. 411, 850, 851, 1480
Kittle v. Freemont, 1 Neb. 328, 1574
v. Sherwin, 11 Neb. 65, 1521
Kittredge v. Inhabitants &c., 138 Mass. 286, 344, 361
v. Town of Walden, 40 Vt. 211, 362
Klatt v. City of Milwaukee, 53 Wis. 196, 776, 1615
Klauder v. McGrath, 35 Pa. St. 128, 212
Klein v. Board &c., 54 Miss. 254, 1527
v. City of Dallas, 71 Tex. 280, 1619, 1629
v. New Orleans, 99 U. S. 149, 1530
v. St. Paul &c. R. Co., 30 Minn. 451, 708
Klemer v. City of Madison, 104 Wis. 330, 1339
Kline v. City of Tacoma, 11 Wash. 193, 1155
Kling v. City of Buffalo, 156 N. Y. 700, 1343, 1344
Klingler v. Bickel, 119 Pa. St. 326, 1122, 1392
Klix v. Nieman, 68 Wis. 271, 795
Klosterman v. Loos, 58 Mo. 290, 217
Knapp v. Grant, 27 Wis. 147, 992, 1538
Knapp v. Mayor &c., 50 Ill. 213, 1526
Knapp, Stout & Co. v. City of St. Louis, 156 Mo. 343, 1318
v. St. Louis &c. R. Co., 126 Mo. 26, 1337
v. St. Louis &c. R. Co., 153 Mo. 560, 586, 1697, 1698, 1705
Knecht v. City of Cincinnati, 18 Ohio Cir. Ct. 875, 1243
Kneedler v. Borough of Norristown, 100 Pa. St. 368, 500, 506, 532, 594, 1392
Kneeland v. City of Milwaukee, 15 Wis. 454, 1502
Knell v. City of Buffalo, 7 N. Y. S. 233, 1186, 1256, 1257
Knight v. City of Philadelphia, 15 W. N. C. 307, 797
v. Clark, 48 N. J. L. 22, 215, 216, 217
v. Inhabitants &c., 70 Maine 500, 1054
v. Kansas City &c. R. Co., 70 Mo. 231, 540, 1422
v. Town of Ashland, 61 Wis. 233, 409, 424
v. Town of Ashland, 65 Wis. 166, 411
v. Town of West Union, 45 W. Va. 194, 524, 986
v. Woods, 129 Ind. 101, 1472
Kniper v. City of Louisville, 7 Bush 599, 1507, 1509
Knoblock v. Chicago &c. R. Co., 31 Minn. 402, 1357
Knoop's Estate, In re, 11 N. Y. S. 773, 1415
Knostman v. City of Davenport, 99 Iowa 589, 1377
Knowles v. Davis, 2 Allen 61, 335
v. Seale, 64 Cal. 377, 1301
v. Yeates, 31 Cal. 82, 371
Knowlton v. Board &c., 9 Wis. 410, 548, 1513, 1520, 1721
Knox v. Board &c., 45 Kan. 152, 1494
v. Challonor, 42 Maine 150, 1106
v. Mayor &c., 55 Barb. 404, 1790
v. Peterson, 21 Wis. 247, 565, 1254
Knox Co. v. Arms, 22 Ill. 175, 1743
v. Davis, 63 Ill. 405, 372
v. Johnson, 124 Ind. 145, 1473
Knox Co. Court v. United States, 109 U. S. 229, 1525
Knoxville v. Cox, 103 Tenn. 368, 1804
Knupfle v. Knickerbocker Ice Co., 84 N. Y. 488, 1588
Kobs v. City of Minneapolis, 22 Minn. 159, 1215
Koch v. City of Ashland, 88 Wis. 603, 1327, 1343
v. City of Milwaukee, 89 Wis. 220, 714
v. City of Williamsport, 195 Pa. St. 488, 1363, 1801
Koehler v. Hill, 60 Iowa 543, 151
Koestenbader v. Price, 41 Iowa 204, 704
Koester v. City of Ottumwa, 34 Iowa 41, 776
Koethe v. Ringer, 46 Minn. 259, 1419
Kokes v. State, 55 Neb. 691, 1686
Kolb v. Mayor &c., 64 N. J. L. 163, 469
v. O'Brien, 86 Ill. 210, 223
Kolkmeyer v. City of Jefferson, 75 Mo. App. 678, 1144, 1149, 1166
Kollock v. Dodge, 105 Wis. 187, 183
Konrad v. Rogers, 70 Wis. 492, 666
Koonce v. Board &c., 106 N. C. 192, 1664
Koons v. St. Louis &c. R. Co., 65 Mo. 592, 794
Koontz v. Burgess &c., 64 Md. 134, 289, 1540

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Kopelka v. City of Bay City, 125 Mich. 625, 1342
Koppikus v. State Cap. Com'rs, 16 Cal. 248, 881, 917
Korah v. City of Ottawa, 32 Ill. 121, 524, 526
Kornburg v. Board &c., 10 Mont. 325, 941
Koshkonong v. Burton, 104 U. S. 668, 1020
Kosmak v. Mayor &c., 53 Hun 329, 1180
Kossman v. City of St. Louis, 153 Mo. 293, 1794
Kottman v. Ayer, 3 Strob. 92, 313
Kountze v. City of Omaha, 5 Dill. 443, 1515
Kraft v. City of Keokuk, 14 Iowa 46, 1725
Krall v. City of New York, 60 N. Y. S. 661; 44 App. Div. 259, 1784, 1793
Kramer v. Cleveland &c. R. Co., 5 Ohio St. 140, 692, 698
Kramrath v. City of Albany, 127 N. Y. 575, 894
v. City of Albany, 53 Hun 206, 284
Kranz v. Mayor &c., 64 Md. 491, 822, 1208
Kreidler v. State, 24 Ohio St. 22, 168
Kreigh v. City of Chicago, 86 Ill. 407, 1355
Kress v. State, 65 Ind. 106, 220, 334
Krickle v. Commonwealth, 1 B. Mon. 361, 516
Krippendorf v. Hyde, 110 U. S. 276, 331
Kriseler v. Le Valley, 122 Mich. 576, 170, 207, 209, 930
Kroeger v. Pitcairn, 101 Pa. St. 311, 217
Kroop v. Forman, 31 Mich. 144, 628
Krueger v. Council &c., 64 N. J. L. 523, 201
Kucheman v. Chicago &c. R. Co., 46 Iowa 366, 682
Kudinger v. City of Saginaw, 59 Mich. 355, 1417
Kuehn v. City of Milwaukee, 92 Wis. 263, 825
Kuehner v. City of Freeport, 143 Ill. 92, 1248, 1249, 1250
Kuhls v. City of Laredo, 27 S. W. 791, 730
Kuhn v. Board &c., 4 W. Va. 499, 104
v. City of Port Townsend, 12 Wash. 605, 66, 1759
Kuhns v. Wisconsin &c. R. Co., 76 Iowa 67, 1797
Kundinger v. City of Saginaw, 59 Mich. 355, 694
Kunkle v. Town of Franklin, 13 Minn. 127, 992
Kunz v. City of Troy, 104 N. Y. 344, 1591, 1608, 1614, 1615, 1616
v. City of Troy, 16 N. Y. St. 459, 826
Kuschke v. City of St. Paul, 45 Minn. 225, 1210
Kyle v. Kyle, 55 Ind. 387, 1572
v. Malin, 8 Ind. 34, 88, 1232, 1258, 1533
Kynaston v. Mayor &c., 2 Str. 1051, 270, 271

L

Laager v. City of San Antonio, 57 S. W. 61, 1775, 1810
Labs v. Cooper, 107 Cal. 656, 1260
Lacy v. Arnett, 33 Pa. St. 169, 1814
Ladd v. City of East Portland, 18 Or. 87, 479, 491
v. City of Gambell, 35 Or. 393, 879, 1506
v. Clements, 4 Cush. 476, 340, 341
Ladd v. Town of Franklin, 37 Conn. 53, 858
Lade v. Shepherd, 2 Str. 1004, 1559
La Fave v. City of Superior, 104 Wis. 454, 1802
Lafayette &c. R. Co. v. Geiger, 34 Ind. 185, 58, 61, 83, 982
v. Smith, 6 Ind. 249, 706
v. Winslow, 66 Ill. 219, 701
La Flamme v. City of Albany, 158 N. Y. 699, 930
Lafon v. Dufrocq, 9 La. An. 350, 1418
Lahr v. Metropolitan &c. R. Co., 104 N. Y. 268, 620, 1582
Laird v. City of De Soto, 22 Fed. 421, 407, 409, 454
Lake v. City of Decatur, 91 Ill. 596, 1142
v. Hurley, 66 Cal. 473, 1493
v. State, 18 Fla. 501, 54
v. Trustees &c., 4 Denio 520, 1232
Lake Co. v. Graham, 130 U. S. 674, 885, 998, 999, 1000, 1003, 1008, 1009, 1024
v. Rollins, 130 U. S. 662, 881, 885
Lake Erie &c. R. Co. v. Boker, 9 Ind. App. 428, 1249
v. Cluggish, 143 Ind. 347, 1379
Lake Pleasanton W. Co. v. Contra Costa W. Co., 67 Cal. 659, 688
Lake Shore Foundry v. City of Cleveland, 8 Ohio C. C. 671, 750
Lake Shore &c. R. Co. v. Chicago &c. R. Co., 97 Ill. 506, 591
v. Cincinnati &c. R. Co., 116 Ind. 578, 679, 692, 1572
v. City of Chicago, 56 Ill. 454, 1142
v. City of Chicago, 144 Ill. 391, 550
v. City of Cleveland, 32 Week. L. Bul. 206, 1321
Lake St. R. Co. v. City of Chicago, 183 Ill. 75, 1248, 1249, 1276
Lally v. Holland, 1 Swan 396, 228
Lamar v. Board &c., 4 Ind. App. 191, 1073
Lamar &c. Co. v. City of Lamar, 140 Mo. 145, 877
Lamb v. Burlington &c. R. Co., 39 Iowa 333, 416, 1519
v. City of Cedar Rapids, 108 Iowa 629, 1325
v. Lane, 4 Ohio St. 167, 698, 699
Lambar v. City of St. Louis, 15 Mo. 610, 1585
v. Village of East Tawas, 86 Mich. 14, 1627
Lambert v. People, 76 N. Y. 220, 196
v. Thornton, 1 Ld. Raym. 91, 467
Lamborn v. County Com'rs, 97 U. S. 181, 242, 245, 248, 1552
Lament v. Haight, 44 How. Pr. 1, 224
Lamm v. Chicago &c. R. Co., 45 Minn. 71, 1575, 1582
v. Port Deposit &c. Ass'n, 49 Md. 233, 258
Lammert v. Lidwell, 62 Mo. 188, 58
Lammon v. Feusier, 111 U. S. 17, 329, 330
Lamoille Valley R. Co. v. Town of Fairfield, 51 Vt. 257, 982
Lampe v. City of San Francisco, 124 Cal. 546, 1379
Lamson v. City of Newburyport, 14 Allen 30, 1053, 1054
Lancaster Co. v. Fulton, 128 Pa. St. 48, 633
Lancaster Co. Poor Directors v. Hartman, 9 Pa. Co. Ct. Rep. 177, 1057, 1062
Land v. Allen, 65 Miss. 455, 957
Land &c. Co. v. Brown, 73 Wis. 294, 54, 560, 561, 1515, 1516

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Land &c. Co. v. McIntyre, 100 Wis. 245, 1731
Landers v. Staten Island R. Co., 53 N. Y. 450, 1411
Land Grant R. Co. v. Board &c., 6 Kan. 256, 997, 1576
Landgrove v. Town of Plymouth, 52 Vt. 503, 1058
Landis v. Borough of Vineland, 54 N. J. L. 75, 493, 520
v. Borough of Vineland, 60 N. J. L. 264, 1141
v. Hamilton, 77 Mo. 554, 1373
Lane, Ex parte, 76 Cal. 587, 1419
v. Baker, 12 Ohio 237, 1494
v. City of Saginaw, 53 Mich. 442, 695
v. City of Syracuse, 42 N. Y. S. 219, 1326
v. Commonwealth, 103 Pa. St. 481, 150
v. Cotton, 1 Salk. 17, 222
v. Inhabitants &c., 72 Maine 354, 364, 1001, 1013
v. Inhabitants &c., 10 Met. 462, 259, 644
v. Schomp, 20 N. J. Eq. 82, 1023
Lane Co. v. Oregon, 7 Wall. 71, 530
Lanfear v. Mayor, 4 La. 97, 534, 1115
Langan v. City of Atchison, 35 Kan. 318, 1631
Langdon v. Chartiers Tp., 131 Pa. St. 77, 188
v. Town of Castleton, 30 Vt. 285, 177, 181
Lange v. Benedict, 73 N. Y. 12, 221
Langford v. Commissioners, 16 Minn. 375, 692
v. United States, 101 U. S. 341, 770, 772
Langhorne v. Robinson, 20 Gratt. 661, 983, 1532, 1548
Langlois v. City of Cohoes, 58 Hun 226; 11 N. Y. S. 908, 1155, 1579
Langsdale v. Bonton, 12 Ind. 467, 1425
Langston v. South Car. R. Co., 2 S. C. 248, 1020
Langworthy v. City of Dubuque, 13 Iowa 86, 401, 1517
v. City of Dubuque, 16 Iowa 271, 104
Lanier v. Mayor &c., 59 Ga. 187, 1508
v. Padgett, 18 Fla. 842, 858
Lanigan v. New York Gaslight Co., 71 N. Y. 29, 1632
Lanning v. Carpenter, 20 N. Y. 447, 64
Lanpher v. Dewell, 56 Iowa 153, 335
Lansing v. Caswell, 4 Paige 519, 1570
v. County Treasurer, 1 Dill. 522, 765, 1531
Lapham v. Rice, 55 N. Y. 472, 1579
Lareau v. Davignon, 5 Abb. Pr. 367, 134
Largue v. State, 76 Tex. 323, 94, 117, 451
Larkin v. Burlington &c. R. Co., 85 Iowa 492, 521
v. Burlington &c. R. Co., 91 Iowa 654, 483
v. City of Boston, 128 Mass. 521, 1622
Larned v. Allen, 13 Mass. 295, 323
v. Briscoe, 62 Mich. 393, 335
v. Burlington, 4 Wall. 275, 838
v. City of Syracuse, 44 N. Y. S. 857, 749
Larney v. City of Cleveland, 34 Ohio St. 599, 536
Larsh v. City of Des Moines, 74 Iowa 512, 1630, 1634
La Salle Co. v. Simmons, 10 Ill. 513, 931, 1780, 1806
Lasbury v. McCague, 56 Neb. 220, 1290, 1291
Lasley v. District of Columbia, 14 App. D. C. 407, 1388
Lassen Co. v. Shinn, 88 Cal. 510, 840
Latham v Village of Wilmette, 168 Ill. 153, 1144
Lathrop v. State, 6 Blackf. 502, 1483
v. Town of Sunderland, 64 Vt. 35, 1473
Latta v. Williams, 87 N. C. 126, 1509
Lauenstein v. City of Fond du Lac, 28 Wis. 336, 282
Lauman v. Des Moines Co., 29 Iowa 310, 1726
Launder v. City of Chicago, 111 Ill. 291, 604
Laundry License Cases, 22 Fed. 701, 1405, 1406
Launtz v. People, 113 Ill. 137, 161, 162, 293, 296, 298, 473
Lavalle v. Soncy, 96 Ill. 467, 1677
Lavery v. Hannigan, 20 J. & Sp. 463, 1610
Law v. Johnson, 118 Ind. 261, 1239
v. People, 87 Ill. 385, 834, 881, 917
v. Town of Fairfield, 46 Vt. 425, 829
Lawbaugh v. Board &c., 177 Ill. 572, 1763
Lawrence v. Bassett, 5 Allen 107, 1740
v. City of Boston, 119 Mass. 126, 701, 702
v. City of Ellensburg, 13 Wash. 341, 1316
v. Hanley, 84 Mich. 399, 1657
v. Ingersoll, 88 Tenn. 52, 158, 159, 160, 161, 167, 294, 298 373, 474
v. Inhabitants &c., 35 Maine 100, 1613
v. Inhabitants &c., 5 Gray 110, 803
v. Traner, 136 Ill. 474, 276, 281, 843, 844, 845, 1478, 1489
Lawrence Co. v. Chattaroi R. Co., 81 Ky. 225, 14
v. Hudson, 41 Ark. 494, 904
Lawton v. Commissioners, 2 Caines 179, 1419
v. Erwin, 9 Wend. 233, 309
Lay v. Wissman, 36 Iowa 305, 1019
Laycock v. City of Baton Rouge, 35 La. An. 475, 233, 646, 895
Layton v. City of New Orleans, 12 La. An. 515, 384, 394, 1517, 1522
Lea v. City of Memphis, 9 Baxt. 103, 1551
v. Hernandez, 10 Tex. 137, 446
Leach v. Cargill, 60 Mo. 316, 1131, 1255
v. People, 122 Ill. 420, 196, 197
v. Wilson Co., 68 Tex. 358, 961, 962
Leake v. City of Phila., 171 Pa. St. 125, 1309
Learned v. Burlington, 2 Am. L. Reg. (N. S.) 394, 1535
Learoyd v. Godfrey, 138 Mass. 315, 1639
Leath v. Summers, 3 Ired. L. 108, 696
Leavenworth Com'rs v. Miller, 7 Kan. 479, 983
Leavenworth Co. v. Barnes, 94 U. S. 70, 1001
Leavenworth &c. R. Co. v. County Court, 42 Mo. 171, 986, 987
Leavitt v. Bell, 55 Neb. 57, 1237
v. Eastman, 77 Maine 117, 1425, 1485
Lebcher v. Board &c., 9 Mont. 315, 638
Le Claire v. City of Davenport, 13 Iowa 210, 100, 1403
Le Clerq v. Trustees &c., 7 Ohio 217, 629

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Lecoul v. Police Jury, 20 La. An. 308, 686, 1448
Le Couteulx v. City of Buffalo, 33 N. Y. 333, 658
Ledey v. City of Amsterdam, 64 N. Y. S. 1036, 1782
Le Duc v. City of Hastings, 39 Minn. 110, 1502
Ledyard v. Ten Eyck, 36 Barb. 102, 1557
Lee v. City of Minneapolis, 22 Minn. 13, 680, 801, 1215
v. Inhabitants &c., 13 Gray 476, 247, 1725
v. Munroe, 7 Cranch 366, 217
v. Pendleton Co. Court, 14 Ky. L. 159, 842, 1039
v. School Dist., 71 Mich. 361, 1491
v. Thomas, 49 Mo. 112, 1513, 1515
v. Trustees &c., 7 Dana 28, 670
v. Village of Greenwich, 63 N. Y. S. 160, 1366
v. Village of Sandy Hill, 40 N. Y. 442, 819
v. Wallis, 1 Kenyon 292, 531, 532
v. Waring, 3 Desau. 57, 311
Lee Co. v. Lackie, 30 Ark. 764, 1052
v. Rogers, 7 Wall. 181, 89
Leech v. State, 78 Ind. 570, 199
Leeds v. City of Richmond, 102 Ind. 372, 684, 822, 1177, 1748
Leeper v. City of South Bend, 106 Ind. 375, 1516
Lees v. Child, 17 Mass. 351, 706
Lehew v. Brummel, 103 Mo. 546, 1494
Lehigh Co. v. Hoffort, 116 Pa. St. 119, 264, 820, 830
v. Kleckner, 5 Watts & S. 181, 1738
Lehigh Valley Coal Co. v. City of Chicago, 26 Fed. 415, 1301
Lehigh Valley Ins. Co. v. Fuller, 81 Pa. St. 398, 1737
Lehigh Water Co.'s Appeal, 102 Pa. St. 515, 1810
Lehigh Water Co. v. Easton, 121 U. S. 388, 568
Lehman v. City of San Diego, 73 Fed. 105, 993
Lehmers v. City of Chicago, 185 Ill. 354, 1154
Lehn v. City of San Francisco, 66 Cal. 76, 1207
Leigh v. State, 69 Ala. 261, 381
Leisse v. St. Louis &c. R. Co., 2 Mo. 105, 701
v. St. Louis &c. R. Co., 72 Mo. 561, 700
Leitch v. People, 183 Ill. 569, 1310
v. Wells, 48 N. Y. 586, 1026
Leloup v. Port of Mobile, 127 U. S. 640, 1399
Leman v. City of Lake View, 131 Ill. 388, 1283
Lemmon v. People, 20 N. Y. 562, 137
Lemon v. City of Newton, 134 Mass. 476, 823
Le Neve v. Vestry &c., 8 El. & Bl. 1054, 1561
Lennehan v. Rollins, 137 Mass. 123, 1779
Lennon v. Mayor &c., 55 N. Y. 361, 468, 1287
Lent v. Tillson, 72 Cal. 404, 1137
v. Tillson, 140 U. S. 316, 559, 1242, 1302
Lenz v. Sherrott, 26 Mich. 139, 523
Leonard v. Cassidy, 8 Ohio C. C. 529, 1705
v. City of Brooklyn, 71 N. Y. 498, 1530
Leonard v. City of Canton, 35 Miss. 189, 88, 245, 655
v. City of Holyoke, 138 Mass. 78, 1624
v. Commonwealth, 112 Pa. St. 607, 369
v. Peacock, 8 Nev. 157, 247, 1724
v. Sparks, 63 Mo. App. 585, 1240
Lepnick v. Gaddis, 72 Miss. 200, 795
Le Roy v. Mayor &c., 4 Johns. Ch. 352, 1720, 1721
Leroy v. Mayor &c., 20 Johns. 430, 1724
Lescouzere v. Ducatel, 18 La. An. 470, 328
Lesley v. Kite, 192 Pa. St. 268, 612
Leslie v. City of Grand Rapids, 120 Mich. 28, 1316, 1374
Lester v. Mayor &c., 29 Md. 415, 1726
Lethbridge v. Mayor &c., 15 N. Y. S. 562, 177
Lever v. McGlachlin, 28 Wis. 364, 289
Levi v. Coyne, 22 Ky. L. 493, 1275, 1276, 1373
Levis v. City of Newton, 75 Fed. 884, 470
Levy v. City of Chicago, 113 Ill. 650, 512
v. Salt Lake City, 5 Utah 302, 1180
v. State, 6 Ind. 281, 1085
Lewey's Island R. Co. v. Bolton, 48 Maine 451, 346
Lewis v. Albertson, 152 Ind. 693, 1294
v. Albertson, 23 Ind. App. 147, 1141, 1148, 1151, 1284, 1759, 1785
v. Board &c., 2 McCrary 464, 981
v. Borough of Homestead, 194 Pa. St. 199, 1776, 1782
v. City of Denver, 9 Colo. App. 328, 1746
v. City of Shreveport, 3 Woods S. 282, 210, 233, 257, 562, 643, 981, 998
v. City of Shreveport, 3 Woods 205, 992
v. City of St. Louis, 4 Mo. App. 563, 1133
v. Commissioners &c., 12 Kan. 186, 1027
v. Commissioners &c., 12 Kan. 230, 986
v. Commissioners &c., 16 Kan. 102, 381
v. Mayor &c., 9 C. B. 401, 663, 667
v. New York &c. R. Co., 123 N. Y. 496, 1567
v. Spencer, 7 W. Va. 689, 1720
v. State, 21 Ark. 209, 1412
v. State, 96 N. Y. 71, 770, 771, 773
v. Town of Brandenburg, 20 Ky. L. 1011, 206, 290
Lexington &c. R. Co. v. Applegate, 8 Dana 289, 1213
L'Herault v. City of Minneapolis, 6 Minn. 261, 1337
L'Hote v. City of New Orleans, 51 La. An. 93, 1404
Libby v. Anoka Co., 38 Minn. 448, 905
v. Town of West St. Paul, 14 Minn. 248, 1725
Liberty Bell, The, 23 Fed. 843, 1717, 1728
Lichtenstein v. Mayor &c., 159 N. Y. 500, 1343
Lieberman v. City of Milwaukee, 89 Wis. 336, 1295, 1702
Liebman v. City of San Francisco, 11 Sawyer 147, 1157
Liffin v. Inhabitants &c., 145 Mass. 549, 1622
Ligare v. City of Chicago, 139 Ill. 46, 588, 611, 1111

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Ligat v. Commonwealth, 19 Pa. St. 456, 698
Light v. State, 14 Kan. 489, 368
Lightburne v. Taxing Dist., 4 Lea 219, 1507
Lightner v. City of Peoria, 150 Ill. 80, 1248, 1250
Lilly v. Taylor, 88 N. C. 489, 1522, 1523, 1534
Lima v. Cemetery Ass'n, 42 Ohio St. 128, 1247
Lincoln v. Board &c., 176 Mass. 210, 1279, 1290, 1293, 1299, 1301
v. City of Boston, 148 Mass. 578, 263, 799, 803
v. City of Worcester, 8 Cush. 55, 1724
v. Inhabitants &c., 75 Maine 141, 234, 647, 715
v. Iron Co., 103 U. S. 412, 1001
Lincoln Co. v. Oneida Co., 80 Wis. 267, 938
Lincoln Land Co. v. Village of Grant, 57 Neb. 70, 743
Linden v. Board &c., 45 Cal. 6, 339, 1681, 1682
Lindley v. Polk Co., 84 Iowa 308, 805, 1076
Lindsay v. City of Chicago, 115 Ill. 120, 540, 1424
v. City of Des Moines, 68 Iowa 368, 1598
v. City of Des Moines, 74 Iowa 111, 1628, 1630
v. City of Sherman, 36 S. W. 1019, 1337
v. Mayor &c., 104 Ala. 257, 603
Linegar v. Rittenhouse, 94 Ill. 208, 381
Linehan, In re, 72 Cal. 114, 1080
v. City of Cambridge, 109 Mass. 212, 662
Linford v. Fitzroy, 13 Q. B. 240, 221
Lingle v. City of Chicago, 178 Ill. 628, 1153
Lingo v. Burford, 112 Mo. 149, 1225, 1568
Lining v. Bentham, 2 Bay 1, 334
Linnehan v. Sampson, 126 Mass. 506, 1631
Linton v. Mayor &c., 53 Ga. 588, 1516
Lionberger v. Rowse, 43 Mo. 67, 1511
Lipes v. Hand, 104 Ind. 503, 698, 704, 1177, 1179
Lippelman v. City of Cincinnati, 4 Ohio C. C. 327, 1163
Lippincott v. Town of Pana, 92 Ill. 24, 985, 996, 1006
Lippman v. City of South Bend, 84 Ind. 276, 538
Lipps v. City of Philadelphia, 38 Pa. St. 503, 593
Lisso v. Parish of Red River, 29 La. An. 590, 615
List v. City of Wheeling, 7 W. Va. 501, 882, 893, 1524
Litchfield v. Ballou, 114 U. S. 190, 885
v. Londonderry, 39 N. H. 247, 1058
v. McComber, 42 Barb. 288, 1261, 1262
v. Parker, 64 N. H. 443, 616
v. Polk Co., 18 Iowa 70, 652
v. Vernon, 41 N. Y. 123, 1233, 1252, 1533
Litten v. Wright School Tp., 127 Ind. 81, 857, 1480
Little v. City of Madison, 49 Wis. 605, 808
v. City of Portland, 26 Or. 235, 1309
v. Coggswell, 20 Or. 345, 879
Little v. Merrill, 10 Pick. 543, 230, 340, 341, 1485
v. Moore, 4 N. J. L. 74, 220
Little Falls Electric &c. Co. v. City of Little Falls, 102 Fed. 663, 716, 725, 1347, 1709
Little Falls Tp. v. Bernards Tp., 44 N. J. L. 621, 1045
Littlefield v. City of Norwich, 40 Conn. 406, 1221
v. State, 42 Neb. 223, 603
Little Miami &c. R. Co. v. City of Dayton, 23 Ohio St. 510, 678
Little Rock v. National Bank, 98 U. S. 308, 978, 1020
v. Willis, 27 Ark. 572, 8
Littlewort v. Davis, 50 Miss. 403, 1471
Livermore v. Board &c., 31 N. J. L. 505, 814, 832, 1577
Livingston, Matter of, 121 N. Y. 94, 1288
v. Lynch, 4 Johns Ch. 573, 1088
v. Mayor &c., 8 Wend. 85, 1233, 1564
v. Paducah, 80 Ky. 656, 1521
v. Pippin, 31 Ala. 542, 210
v. School Dist. &c., 11 S. D. 150, 1030
v. Wider, 53 Ill. 302, 1531, 1538
Livingston Co. v. Darlington, 101 U. S. 407, 764, 1514
v. First Nat'l Bank &c., 128 U. S. 102, 1004, 1006
Lloyd v. Mayor &c., 5 N. Y. 364, 779, 788
Loague v. Taxing Dist. &c., 29 Fed. 742, 455
Loan Ass'n v. Topeka, 20 Wall. 655, 549, 559, 624, 890, 983, 1523, 1534, 1537, 1542
Locke v. Central City, 4 Colo. 65, 174, 177
v. Davison, 111 Ill. 19, 835
v. Postmaster-General, 3 Mason 446, 320
Lockhart v. City of Troy, 48 Ala. 579, 289
v. Craig &c. R. Co., 139 Pa. St. 419, 682, 683, 1352
Lockwood v. City of St. Louis, 24 Mo. 20, 1206, 1231, 1247, 1722
Loder v. McGovern, 48 N. J. Eq. 275, 1193
Lodie v. Arnold, 2 Salk. 458, 1115
Loeb v. City of Attica, 82 Ind. 175, 1400
Loesnitz v. Seelinger, 127 Ind. 422, 1169, 1288
Loewere v. City of Sedalia, 77 Mo. 431, 1641
Loftin v. Citizens' Bank, 85 Ind. 341, 1520
Logan v. Pyne, 43 Iowa 524, 568, 618, 641
v. Taylor, 31 Ill. App. 263, 913
Lohr v. Phillipsburg Borough, 165 Pa. St. 555, 1337
Loker v. Inhabitants &c., 13 Pick. 343, 233, 638, 647
London v. City of Wilmington, 78 N. C. 109, 1521
London &c. Land Co. v. City of Jellico, 103 Tenn. 320, 732, 746
Londoner v. People, 15 Colo. 557, 165
Long v. Boone Co., 36 Iowa 60, 648
v. City of Duluth, 49 Minn. 280, 565, 567, 1351, 1809
v. Fuller, 68 Pa. St. 170, 689
v. Long, 57 Iowa 497, 223
v. Mayor &c., 81 N. Y. 425, 197
v. Straus, 107 Ind. 94, 857
v. Taxing Dist. &c., 7 Lea 134, 499
Longan v. Taylor, 31 Ill. App. 263, 1483

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Look v. Inhabitants &c., 51 Maine 375, 1726
Loomis v. Spencer, 1 Ohio St. 153, 983
v. Wadhams, 8 Gray 558, 1740
Loop v. Woodward, 1 Ind. App. 105, 913
Lorbeer v. Hutchinson, 111 Cal. 272, 1712
Lord v. City of Anoka, 36 Minn. 176, 276, 277, 732
v. City of Mobile, 113 Ala. 360, 1317, 1324, 1376
v. City of Oconto, 47 Wis. 386, 282, 629
v. City of Saco, 87 Maine 231, 1366
v. Governor &c., 2 Phill. 740, 296
v. Mayor &c., 65 N. J. L. 27, 1311
v. Meadville Water Co., 135 Pa. St. 122, 1456
Lorence v. City of Ellensburgh, 13 Wash. 341, 1330, 1336
Lorillard v. Town of Monroe, 11 N. Y. 392, 830, 1097
Lorrilard v. Town of Monroe, 12 Barb. 161, 1726
Los Angeles &c. Co. v. City of Los Angeles, 88 Fed. 720, 547, 566, 672, 712, 724, 727 736, 1703, 1806, 1814
Los Angeles Gas Co. v. Toberman, 61 Cal. 199, 260
Loser v. Board &c., 92 Mich. 633, 1070
Lott v. Mayor &c., 84 Ga. 681, 877, 896
v. Morgan, 41 Ala. 246, 1537
v. Ross, 38 Ala. 156, 1232, 1254
v. Swezey, 29 Barb. 87, 1265
Lotze v. City of Cincinnati, 61 Ohio St. 272, 1772, 1776
Loud v. City of Charleston, 99 Mass. 208, 1722
v. City of Charleston, 103 Mass. 278, 1499
Louden v. East Saginaw, 41 Mich. 18, 1552
Loughbridge v. Harris, 42 Ga. 500, 685
Loughran v. City of Des Moines, 72 Iowa 382, 1180
Loughridge v. City of Huntington, 56 Ind. 253, 487
Louis v. Brown Tp., 109 U. S. 162, 1026
Louisiana v. Jumel, 107 U. S. 711, 18
v. Mayor &c., 109 U. S. 285, 412, 799, 800, 1524
v. Pilsbury, 105 U. S. 278, 412, 521, 764, 1520
v. Police Jury, 111 U. S. 716, 1523, 1529
v. Taylor, 105 U. S. 454, 995
v. Wood, 102 U. S. 294, 237, 240, 633, 1015
Louisiana Const. &c. Co. v. Illinois &c. R. Co., 49 La. An. 527, 566
Louisiana Ice Mfg. Co. v. City of New Orleans, 43 La. An. 217, 1163
Louisville v. Bank of Louisville, 174 U. S. 439, 977
v. Henning, 1 Bush 381, 248
v. Hyatt, 2 B. Mon. 177, 1257
v. Nevin, 10 Bush 549, 1245, 1247
v. Savings Bank, 104 U. S. 469, 995
Louisville Bridge Co. v. City of Louisville, 81 Ky. 189, 1499, 1514
Louisville Gas Co. v. Citizens' &c. Co., 115 U. S. 683, 104, 566, 569, 1347
Louisville &c. R. Co. v. Boney, 117 Ind. 501, 1249
v. City of East St. Louis, 134 Ill. 656, 1162, 1250, 1300
v. City of Louisville, 4 Bush 478, 1509
v. City of Louisville, 8 Bush 415, 466, 1093
Louisville &c. R. Co. v. Commonwealth, 13 Bush 388, 1109
v. Davidson Co. Court, 1 Sneed 637, 374, 983, 985
v. Dryden, 39 Ind. 393, 698
v. Etzler, 3 Ind. App. 562, 1566
v. Louisville, 8 Bush 415, 250
v. Orr, 91 Ky. 109, 1554
v. Patchen, 167 Ill. 204, 540
v. Shires, 198 Ill. 617, 64, 87, 98, 1424
v. Smith, 91 Ind. 119, 1379
v. Sonne, 21 Ky. 848, 1705
v. State, 122 Ind. 443, 1251
v. State, 8 Ind. App. 377, 1249
Louisville Steam Forge Co. v. Anderson, 22 Ky. L. 397, 513
Louisville Tr. Co. v. City of Cincinnati, 73 Fed. 716, 1758
v. City of Cincinnati, 76 Fed. 296, 1350, 1759
Louisville Water Co. v. Clarke, 143 U. S. 1, 104
Loute v. Allegheny, 2 Pittsb. 411, 951, 952
Love v. City of Atlanta, 95 Ga. 129, 785, 797
v. City of Raleigh, 116 N. C. 296, 672, 808
v. Mayor &c., 11 Vroom 456, 201
Lovejoy v. Whipple, 18 Vt. 379, 1017
Loveland v. City of Detroit, 41 Mich. 367, 670
Lovell v. City of St. Paul, 10 Minn. 290, 1262
v. Seeback, 45 Minn. 465, 1048
Loverin v. School Dist., 64 N. H. 102, 1495
Lovingston v. Board &c., 99 Ill. 564, 1483
Low v. Lewis, 46 Cal. 549, 1546
v. Mayor &c., 5 Cal. 214, 570
v. Pettengill, 12 N. H. 513, 1427
Lowber v. Mayor &c., 5 Abb. Pr. 325, 11, 446
Lowe v. Board &c., 94 Ind. 553, 457, 1245
v. City of Omaha, 33 Neb. 587, 1222
v. Commissioners, R. M. Charit. 302, 168, 1414, 1420
v. Inhabitants &c., 133 Mass. 526, 1623
Lowell v. City of Boston, 111 Mass. 454, 549, 559, 979, 1534, 1542
v. Watertown Tp., 58 Mich. 568, 1803
Lowell Sav. Bank v. Inhabitants &c., 8 Allen 109, 210
Lower v. Wallick, 25 Ind. 68, 530
Lower Augusta v. Selinsgrove, 64 Pa. St. 166, 1043
Lower Augusta Tp. v. Northumberland Co., 37 Pa. St. 143, 1057
Lowndes Co. v. Hunter, 49 Ala. 507, 1734
Lowrey v. City of Delphi, 55 Ind. 250, 1578
Lowry v. Polk Co., 51 Iowa 50, 319, 902
Lozier v. Newark, 48 N. J. L. 452, 494
Luburg, Appeal of, 17 Atl. 245, 1486
Lucas v. Board &c., 44 Ind. 524, 419
v. City of San Francisco, 7 Cal. 463, 554
v. Hunt, 5 Ohio St. 488, 242
v. Shepherd, 16 Ind. 368, 308
Luce v. Board &c., 153 Mass. 108, 1692
v. Fensler, 85 Iowa 596, 556
Luckett v. Buckman, 8 Ky. L. 255, 1489
Ludington Water Supply v. City of Ludington, 119 Mich. 480, 726, 740, 875, 931, 1758
Ludlam v. Ludlam, 26 N. Y. 356, 129, 130, 131

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Luehrman v. Taxing Dist., 2 Lea 425, 189, 446, 455, 456, 457, 1526
Lufkin v. City of Galveston, 58 Tex. 545, 1206, 1234
Luke v. City of Brooklyn, 43 Barb. 54, 1394
Luling v. City of Racine, 1 Biss. 314, 1023
Lum v. City of Bowie, 18 S. W. 142, 390, 395, 407
v. McCarthy, 39 N. J. L. 287, 1428
Lumbard v. Aldrich, 8 N. H. 31, 1426
v. Stearns, 4 Cush. 60, 688
Lumsden v. City of Milwaukee, 8 Wis. 485, 697
v. Cross, 10 Wis. 282, 548, 558
Lund v. Inhabitants &c., 11 Cush. 563, 1601
Lundberg v. City of Chicago, 183 Ill. 572, 1235
Lundborn v. City of Manistee, 93 Mich. 770, 1288
Lundon v. City of Chicago, 83 Ill. App. 208, 1339
Luques v. Inhabitants &c., 77 Maine 186, 1536
Lusk v. City of Chicago, 176 Ill. 207, 512, 1148
v. Perkins, 48 Ark. 238, 958
Luther v. Borden, 7 How. 1, 151
Lutterloh v. Mayor &c., 15 Fla. 306, 681, 1111
Luzader v. Sargeant, 4 Wash. 299, 988
Lyddy v. Long Island City, 104 N. Y. 218, 181, 233, 637, 645
Lydecker v. Eells, 3 N. Y. S. 328, 1123
v. Village of Nyack, 39 N. Y. S. 509, 713
Lyell v. Supervisors &c., 3 McLean 580, 1744
v. Supervisors &c., 6 McLean 446, 951
Lyman v. Commonwealth, 55 S. W. 686, 157, 204
v. Gedney, 114 Ill. 388, 576
v. Hampshire Co., 138 Mass. 74, 1623, 1624
Lynch, Ex parte, 2 Hill 45, 870, 1674
v. Clark, 1 Sandf. Ch. 584, 131
v. Eastern &c. R. Co., 57 Wis. 430, 1728
v. Lafland, 4 Coldw. 96, 90, 103, 456
v. Mayor &c., 76 N. Y. 60, 1603
v. Mayor &c., 47 Hun 524, 1640
v. People, 16 Mich. 472, 539
Lynchburg &c. R. Co. v. Board &c., 109 N. C. 159, 855
Lynde v. County, 16 Wall. 6, 1011, 1016
Lyon v. Adams, 4 S. & R. 443, 1527
v. Adamson, 7 Iowa 509, 217
v. Alley, 130 U. S. 177, 1254
v. Fairfield Co., 2 Root 30, 1735
v. Goree, 15 Ala. 360, 222
v. Irish, 58 Mich. 518, 216
v. Jerome, 15 Wend. 569, 674
v. Jerome, 26 Wend. 485, 282, 547, 705, 1539
v. Munson, 2 Cow. 426, 1573
v. Rice, 41 Conn. 245, 339, 341
v. Town of Tonawanda, 98 Fed. 361, 1166, 1285, 1792
Lyon Co. v. Keene &c. Bank, 97 Fed. 159, 999
v. Keene &c. Bank, 100 Fed. 337, 876, 1011, 1032
Lyons v. City of Cambridge, 132 Mass. 534, 1622
v. City of Red Wing, 76 Minn. 20, 930, 1330, 1796
v. Inhabitants &c., 119 Mass. 491, 1595
v. Munson, 99 U. S. 684, 1001
Lyth v. City of Buffalo, 48 Hun 175, 188

M

Maanum v. City of Madison, 104 Wis. 272, 1800
Macauley v. Mayor &c., 67 N. Y. 602, 817, 1557
Mace v. Nottingham-West, 1 N. H. 52, 1053
Mack v. Jones, 21 N. H. 393, 623, 1545
MacKenzie v. Wooley, 39 La. An. 944, 485
Mackey v. City of Vicksburg, 64 Miss. 777, 794, 816
v. Columbus Tp., 71 Mich. 227, 1172
Mackie v. City of West Bay City, 106 Mich. 242, 1331
Macklin v. Trustees &c., 88 Ky. 592, 844, 1489
Macklot v. City of Davenport, 17 Iowa 379, 221, 1725
MacLean v. Speed, 52 Mich. 257, 1672
Macomber v. Nichols, 34 Mich. 212, 1556
Macon v. Patty, 57 Miss. 378, 1262
Macon Co. v. Shores, 97 U. S. 272, 995, 1000, 1001, 1018
Macy v. City of Duluth, 68 Minn. 452, 731
v. City of Indianapolis, 17 Ind. 267, 1177
Madden v. Smeltz, 2 Ohio C. C. 168, 544
Maddox v. Graham, 2 Met. 56, 280, 983, 1526, 1527, 1528, 1681
v. Neal, 45 Ark. 121, 1494, 1496
Maddux v. City of Newport, 12 Ky. L. 657, 1157
Madison v. Harbor Board, 76 Md. 395, 1687
Madison &c. Church v. Baptist Church, 5 Robt. 649, 290
Madison Overseers v. Poor Directors, 9 Pa. Co. Ct. R. 435, 1049
Madison Tp. v. Dunkle, 114 Ind. 262, 861, 903
Madry v. Cox, 73 Tex. 538, 394, 404, 1518
Magee v. City of Troy, 48 Hun 383, 1 N. Y. S. 24, 935, 1609, 1617
v. Commonwealth, 46 Pa. St. 358, 593, 1267
v. Supervisors, 10 Cal. 376, 381
Magie v. Stoddard, 25 Conn. 565, 198
Magill v. Kauffman, 4 S. & R. 317, 240
Magneau v. City of Fremont, 30 Neb. 843, 195, 274, 276, 278, 1508
Maguire v. Mayor &c., 76 Ga. 84, 1177
v. Middlesex R. Co., 115 Mass. 239, 1618
v. Smock, 42 Ind. 1, 1258
v. State Saving Inst., 62 Mo. 344, 1725
Mahady v. Bushwick R. Co., 91 N. Y. 498, 1599
Mahaska Co. v. Ingalls, 16 Iowa 81, 324
Maher v. City of Chicago, 38 Ill. 266, 239, 649, 1306
v. City of Ottawa, 114 Ill. 659, 624
Mahon v. Mayor &c., 31 N. Y. S. 676, 783
Mahoney v. Dankwart, 108 Iowa 321, 540
Mahony v. Bank, 4 Ark. 620, 50
Main v. Fort Smith, 49 Ark. 480, 285, 1259
Maine Water Co. v. City of Waterville, 93 Maine 586, 722, 725, 1548
Mairs v. City of New York, 65 N. Y. S. 160, 721
v. Manhattan &c. Ass'n, 89 N. Y. 498, 1599
v. Mayor &c., 62 N. Y. S. 351, 720, 736

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Makemson v. Kauffman, 35 Ohio St. 444, 1288
Makinnon v. Penson, 25 Eng. L. & Eq. 457, 8
Makley v. Whitmore, 61 Ohio St. 587, 1284, 1304, 1543
Malcom v. City of Boston, 173 Mass. 312, 1766
Mall v. City of Portland, 35 Or. 89, 1311
Mallett v. Uncle Sam &c. Co., 1 Nev. 188, 171
Mallory v. Griffey, 85 Pa. St. 275, 1613
v. Supervisors, 2 Cow. 531, 178
Malone v. City of Toledo, 28 Ohio St. 643, 675
v. Murphy, 2 Kan. 250, 1412
Maloney v. City of Cambridge, 175 Mass. 313, 1794
v. Cook, 21 R. I. 471, 928, 930, 1366
Maltus v. Shields, 2 Met. 553, 1515
Manchester v. City of Hartford, 30 Conn. 118, 1591, 1619
Maneval v. Jackson Tp., 9 Pa. Co. Ct. 28, 835, 859
Mangam v. Brooklyn, 98 N. Y. 585, 183
Manhattan Co. v. Van Keuren, 23 N. J. Eq. 251, 1107
Manhattan R. Co., In re, 102 N. Y. 301, 1254
Manhattan Sav. Inst. v. New York &c. Bank, 59 N. Y. S. 51, 1012
Manice v. Mayor &c., 8 N. Y. 120, 1232, 1533
Manker v. Faulhaber, 94 Mo. 430, 92, 205, 206
Manley v. Emlen, 46 Kan. 655, 1450
Mann v. City of Le Mars, 109 Iowa 251, 301
v. City of Yazoo, 31 Miss. 574, 324
Manning v. City of Lowell, 130 Mass. 21, 1775
v. Den, 90 Cal. 610, 1262
v. Inhabitants &c., 6 Pick. 6, 365, 1425
Mannix v. State, 115 Ind. 245, 1676
Manor v. McCall, 5 Ga. 522, 1683
Manross v. City of Oil City, 178 Pa. St. 276, 1328
Mansfield v. Fuller, 50 Mo. 338, 1527
v. Mayor &c., 44 N. Y. S. 229, 1782
Manuel v. Board &c., 98 N. C. 9, 1076
Manufacturers' Nat'l Bank v. Dickerson, 41 N. J. L. 448, 329
Marble v. City of Worcester, 4 Gray 395, 1600
v. McKenney, 60 Maine 332, 347, 366
v. Whitney, 28 N. Y. 297, 1559
Marbury v. Madison, 1 Cranch 137, 313
March v. Commonwealth, 12 B. Mon. 25, 97, 468, 523
Marchand v. Town of Maple Grove, 48 Minn. 276, 1570
Marchant v. Langworthy, 6 Hill 646, 343, 348, 1485
Marcy v. Oswego Tp., 92 U. S. 637, 885, 998, 1001, 1002, 1003, 1009, 1022, 1023
v. Taylor, 19 Ill. 633, 1559
Marden v. City of Boston, 155 Mass. 359, 1045
v. Portsmouth, 59 N. H. 18, 201
Marion Co. v. Coler, 75 Fed. 352, 1685
Marion &c. R. Co. v. Champlin, 37 Kan. 682, 1521
Mark v. State, 97 N. Y. 572, 111, 495
Market St. R. Co. v. Central R. Co., 51 Cal. 583, 1352
Markey v. City of Milwaukee, 76 Wis. 349, 1176
Markle v. Town Council &c., 14 Ohio 586, 467, 536, 1414
v. Wright, 13 Ind. 548, 296
Marney v. State, 13 Mo. 7, 318
Marquette Co. v. Ward, 50 Mich. 174, 319
Marquis v. City of Santa Ana, 103 Cal. 661, 202
Marsh v. Board &c., 42 Wis. 502, 1550, 1552, 1720
v. City of Brooklyn, 59 N. Y. 280, 1205
v. Fulton Co., 10 Wall. 676, 233, 253, 257, 258, 633, 636, 644, 890, 977, 984, 993, 994, 998, 1000, 1001, 1023, 1028, 1524, 1757
v. Inhabitants &c., 153 Mass. 34, 355
v. Town of Little Valley, 64 N. Y. 112, 870, 1526
Marshall v. Borough of Ellwood City, 189 Pa. St. 348, 731
v. City of Belle Plaine, 106 Iowa 508, 1327
v. City of Buffalo, 64 N. Y. S. 411, 800
v. Commonwealth, 59 Pa. St. 455, 1421
v. Donovan, 10 Bush 681, 1513
v. Harwood, 5 Md. 423, 168
v. Silliman, 61 Ill. 218, 988, 1005, 1531
v. Smith, L. R. 8 C. P. 416, 535
v. State, 1 Ind. 72, 1660
v. Vicksburg, 15 Wall. 146, 1537
Marshall Co. v. Cook, 38 Ill. 44, 973, 987
Martel v. City of St. Louis, 94 Ill. 67, 1349, 1757
Martens v. People, 186 Ill. 314, 492
Martin v. Brown, 62 Tex. 485, 1490
v. Chicago &c. R. Co., 87 Ill. App. 208, 1808
v. City Council, 13 Rich. Eq. 50, 1513
v. City of Chelsea, 175 Mass. 516, 1800, 1806
v. Dix, 52 Miss. 53, 405, 673, 1516, 1518
v. Gleason, 139 Mass. 183, 674, 688
v. Hilt, 53 Ark. 300, 1175
v. Lemon, 26 Conn. 192, 294
v. Mayor, 1 Hill 545, 225, 251, 253, 647, 668, 700, 701
v. Neal, 125 Ind. 547, 947
v. Slaughter, 20 Ky. L. 1743, 1307
v. State, 23 Neb. 371, 472, 1677
v. Stanaback, 53 N. J. L. 529, 1044
v. Territory, 5 Okl. 188, 878
v. Towle, 59 N. H. 31, 1627
v. Town of Rosedale, 130 Ind. 109, 597
Martindale v. Martindale, 10 Ind. 566, 524
v. Palmer, 52 Ind. 411, 189, 272, 481, 1150
Martinovich v. Wooley, 128 Cal. 141, 1375, 1783
Martz v. Long, 110 Pa. St. 502, 154
Martz's Election, 1 Atl. 419, 154
Marvin v. McCullum, 20 Johns. 288, 1017
v. Town of Jacobs, 77 Wis. 31, 966
v. United States, 44 Fed. 405, 179
Maryland v. Baltimore &c. R. Co., 3 How. 534, 759
Mason v. Bristol, 10 N. H. 36, 1053
v. City of Chicago, 178 Ill. 499, 1174, 1310
v. City of Des Moines, 108 Iowa 658, 718, 1279
v. City of Shawneetown, 77 Ill. 533, 526, 987
v. City of Sioux Falls, 2 S. D. 640, 570, 571, 1131, 1234
v. Fearson, 9 How. 248, 1201

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Mason v. Johnson, 51 Cal. 612, 1552
v. Kennedy, 89 Mo. 23, 362
v. Messenger, 17 Iowa 261, 692
v. School Dist., 20 Vt. 487, 340, 343, 346, 1485
v. Trustees &c., 4 Bush 406, 1399, 1507
Massachusetts v. Inhabitants &c., 154 Mass. 462, 1631
Massing v. Ames, 37 Wis. 645, 1255
Massinger v. City of Millville, 63 N. J. L. 123, 527
Master &c. v. Brooking, 3 Q. B. 95, 500
Master of Butchers' Co. v. Bullock, 3 Bos. & Pul. 434, 534
Master of Vintners' Co. v. Passey, 1 Burr. 235, 517, 528
Masters v. City of Troy, 50 Hun 485, 1616, 1617, 1623, 1626
v. Village of Bowling Green, 101 Fed. 101, 804
Matheny v. Wolffs, 2 Duv. 137, 745
Mather v. City of Ottawa, 114 Ill. 659, 559, 659, 980
v. Crawford, 36 Barb. 564, 1172, 1580
Matheson v. Town of Mazomanie, 20 Wis. 191, 1726
Mathis v. Rose, 64 N. J. L. 45, 208
Matthews v. City of Alexandria, 68 Mo. 115, 281, 629
v. Inhabitants &c., 131 Mass. 521, 362, 366, 662
Mattingly v. City of Plymouth, 100 Ind. 545, 1224, 1255
v. District of Columbia, 97 U. S. 687, 1302
Maudlin v. City of Trenton, 67 Mo. App. 452, 515, 1777
Mauldin v. City Council &c., 33 S. C. 1, 571, 1465
Maultby v. City of Leavenworth, 28 Kan. 745, 1632
Maupin v. Franklin Co., 67 Mo. 327, 233, 647, 1171
Maurin v. Smith, 25 La. An. 445, 1534
Maury Co. v. Lewis Co., 1 Swan 236, 14
Maus v. City of Springfield, 101 Mo. 613, 1374, 1631
Maxmilian v. Mayor &c., 62 N. Y. 160, 775, 781, 786, 788, 814, 1076, 1096, 1768
Maxwell v. Board &c., 119 Ind. 20, 699
v. City of Chicago, 185 Ill. 18, 1277
v. Newbold, 18 How. 511, 1263
v. Tolly, 26 S. C. 77, 381
May v. Cass Co., 30 Fed. 762, 933
v. City of Boston, 150 Mass. 517, 1622
v. City of Gloucester, 174 Mass. 583, 716
v. Holdridge, 23 Wis. 93, 558
v. Juneau Co., 30 Fed. 241, 779
v. Logan Co., 30 Fed. 250, 779
v. Mercer Co., 30 Fed. 246, 779
v. People, 1 Colo. 157, 503
Mayall v. City of St. Paul, 30 Minn. 294, 1140, 1202
Mayberry v. Inhabitants &c., 56 Maine 342, 1373
Mayer v. American Ins. Co., 15 Daly 215, 1419
v. Sweeney, 22 Mont. 103, 186
Mayfield v. Moore, 53 Ill. 428, 198
Mayhew v. District of Gay Head, 13 Allen 129, 300, 365
Maylone v. City of St. Paul, 40 Minn. 406, 827
Maynard v. Board &c., 84 Mich. 228, 376
v. City of Northampton, 157 Mass. 218, 1182
Maynard v. Woodward, 36 Mich. 423, 664
Mayor &c., Ex parte, 23 Wend. 277, 1253
Mayor &c., In re, 99 N. Y. 569, 1536
Mayor &c., In re, 54 N. Y. S. 1066, 1782
Mayor &c., In re, 11 Johns. 77, 1247, 1512, 1545
Mayor, Matter of, 58 N. Y. S. 736, 1318
Mayor &c. v. Africa, 77 Fed. 501, 1350, 1351
v. Allaire, 14 Ala. 400, 98, 495, 496, 607
v. Althrop, 5 Coldw. 554, 1521
v. Bailey, 2 Denio 433, 688, 1208, 1543
v. Baldwin, 57 Ala. 61, 1287, 1502, 1722
v. Baltimore &c. R. Co., 6 Gill 288, 1545
v. Baltimore &c. R. Co., 21 Md. 50, 1722
v. Beasly, 1 Humph. 232, 499
v. Blache, 3 Miller 618, 326
v. Board &c., 113 Mass. 161, 1037
v. Board &c., 15 Md. 376, 1432
v. Bolt, 5 Ves. Jr. 129, 1125
v. Bonnell, 57 N. J. L. 424, 749
v. Boone, 93 Ga. 662, 1333
v. Bouldin, 23 Md. 328, 692, 1572
v. Bowman, 39 Miss. 671, 254, 1389
v. Boyd, 64 Md. 10, 1137
v. Broadway &c. R. Co., 97 N. Y. 275, 521
v. Broadway &c. R. Co., 17 Hun 242, 1509
v. Brooke, 7 Q. B. 339, 92
v. Brown, 65 Cal. 583, 1542
v. Brown, 9 Heisk. 6, 1075
v. Cabot, 28 Ga. 50, 572, 1079
v. Caldwell, 81 Ga. 76, 1738
v. Central R. Co., 53 Ga. 120, 699
v. Central &c. R. Co., 40 N. J. Eq. 417, 1317
v. Chapman, 94 Ga. 711, 1358
v. Colgate, 12 N. Y. 141, 1261
v. Commissioners &c., 122 N. C. 5, 986
v. Cowen, 88 Md. 447, 1379
v. Crowell, 40 N. J. L. 207, 326
v. Cunliff, 2 N. Y. 165, 233, 251, 647, 1596
v. Dean, 62 Ill. App. 41, 1712
v. Dearing, 15 La. An. 208, 1410
v. Dechert, 32 Md. 369, 76, 109, 1410
v. Dennison, 69 Fed. 58, 984, 993, 1006
v. Dickerson, 45 N. J. L. 38, 315
v. Dufty, 70 Md. 47, 1177, 1180
v. Dupuis, 30 La. An. 1105, 480
v. Dykes, 103 Ga. 847, 1332
v. Elliott, 3 Rawle 170, 563, 664
v. Eschbach, 18 Md. 276, 217, 253, 260, 1257
v. Ewing, 2 Penn. 66, 1376
v. Fahm, 60 Ga. 109, 1436
v. Feeley, 66 Ga. 31, 1551
v. Finney, 54 Ga. 317, 58, 61, 94, 117
v. Furze, 3 Hill 612, 745, 779, 1159, 1592
v. Gear, 27 N. J. L. 265, 201, 487, 1657
v. Georgia R. Co., 72 Ga. 800, 517
v. Gerspach, 33 La. An. 1011, 608, 1081, 1110, 1121
v. Gieler, 13 Lea 611, 1209
v. Gill, 31 Md. 375, 651, 654, 883, 889, 1730
v. Gilmore, 21 Fed. 870, 996, 982, 984
v. Green Mount Cemetery, 7 Md. 517, 1246
v. Groshon, 30 Md. 436, 1730

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Mayor &c. v. Hall, 46 Kan. 531, 1647
v. Hardwicke, L. R. 9 Ex. 13, 261
v. Harrison, 30 N. J. L. 73, 650
v. Hartridge, 37 Ga. 115, 704, 1232, 1511
v. Harwood, 32 Md. 471, 1101, 1232
v. Hays, 25 Ga. 590, 1445
v. Henley, 2 Cl. & F. 331, 123
v. Hoffman, 29 La. An. 651, 594, 1110, 1121, 1391
v. Holland Tr. Co., 20 N. J. L. J. 214, 1110, 1710
v. Hook, 62 Md. 371, 1196
v. Hughes, 110 Ga. 795, 1709
v. Hughes, 1 Gill & J. 480, 517, 1253
v. Hussey, 67 Md. 112, 1552
v. Hussy, 21 Ga. 80, 1412
v. Hyatt, 3 E. D. Smith 156, 496, 523
v. Inman, 57 Ga. 370, 107
v. Isaacks, 68 Tex. 116, 1618, 1619, 1636
v. Jackson, 1 Doug. 106, 261, 715
v. Jacques, 30 Ga. 506, 1403
v. Jersey City R. Co., 20 N. J. Eq. 360, 90, 103
v. Johns Hopkins Hospital, 56 Md. 1, 1239, 1242
v. Johnson, 62 Md. 225, 1288
v. Jones, 42 Ala. 630, 535
v. Jones, 67 Ga. 489, 1499
v. Judah, 5 Leigh 305, 246
v. Kelly, 98 N. Y. 467, 178
v. Keyser, 72 Md. 106, 654
v. Kiernan, 50 N. J. L. 246, 832, 1180
v. Kimbrough, 12 Heisk. 133, 1075
v. King, 7 Lea 441, 1085
v. Lanham, 67 Ga. 753, 533, 1085
v. Lasser, 9 Humph. 757, 8, 1075
v. Lewis, 92 Ala. 352, 1324
v. Long, 54 Ga. 330, 1545
v. Long, 31 Mo. 369, 697, 704, 1417
v. Lord, 9 Wall. 409, 1526, 1527, 1528
v. Lord, 18 Wend. 126, 802
v. Lumpkin, 5 Ga. 447, 522
v. Lyon, 69 Ga. 577, 1417
v. Macon &c. Bank, 60 Ga. 133, 1511
v. Magruder, 34 Md. 381, 107
v. Marriott, 9 Md. 160, 1125
v. Mayberry, 6 Humph. 368, 1168, 1198, 1271
v. Mayor &c., 30 Ga. 506, 1106
v. McCary, 84 Ala. 469, 1618, 1639
v. McKee, 2 Yerg. 167, 529
v. McWilliams, 67 Ga. 106, 895, 1463
v. Merritt, 27 La. An. 568, 326
v. Merryman, 86 Md. 584, 791
v. Messerole, 26 Wend. 132, 1287, 1722
v. Meuer, 35 La. An. 1192, 1414
v. Minor, 73 Ga. 484, 1417
v. Mitchell, 79 Ga. 807, 1117
v. Moran, 46 Mich. 213, 190
v. Mulligan, 95 Ga. 323, 1763
v. Murphy, 40 N. J. L. 145, 527
v. Musgrave, 48 Md. 272, 233, 250, 646, 699
v. Muzzy, 33 Mich. 61, 181
v. Nichols, 4 Hill 209, 97, 468, 494
v. O'Callaghan, 41 N. J. L. 349, 244
v. O'Donnell, 53 Md. 110, 1608
v. Odrenan, 12 Johns. 122, 532, 534
v. Ohio &c. R. Co., 26 Pa. St. 355, 1184, 1352
v. O'Neill, 63 Md. 336, 1432
v. O'Shee, 51 La. An. 719, 1505
v. Patterson, 109 Ga. 370, 514
v. Phelps, 27 Ala. 55, 100, 507
v. Porter, 18 Md. 289, 282
Mayor &c. v. Poultney, 25 Md. 18, 279
v. Radecke, 49 Md. 217, 500, 502, 503, 508, 605, 1387, 1388, 1391, 1704
v. Railroad Com'rs, 113 Mass. 161, 843
v. Railroad Co., 21 Md. 50, 192
v. Ray, 19 Wall. 468, 210, 235, 239, 240, 637, 645, 837, 838, 863, 941, 971, 973, 978
v. Reilly, 59 Hun 501, 13 N. Y. S. 521, 720, 1187
v. Reynolds, 20 Md. 1, 217, 646
v. Root, 8 Md. 95, 1745
v. Rowland, 26 Ala. 498, 1744
v. Ryan, 35 How. Pr. 408, 318
v. Scharf, 54 Md. 499, 281, 1242
v. Scharf, 56 Md. 50, 1242
v. Scott, 1 Pa. St. 309, 685
v. Seaber, 3 Burr. 1866, 383
v. Second Ave. R. Co., 32 N. Y. 261, 568, 618, 1507
v. Sehner, 37 Md. 180, 104
v. Sharff, 54 Md. 499, 1158
v. Sheffield, 4 Wall. 189, 8, 1596
v. Shelton, 1 Head 24, 57
v. Sibberns, 3 Abb. App. Dec. 266, 318, 332
v. Small, 108 Ga. 309, 1754
v. Smith, 80 Md. 458, 1300
v. Sonneborn, 113 N. Y. 423, 650, 746
v. Starr, 112 Ala. 98, 793, 1334, 1338, 1376, 1787
v. State, 15 Md. 376, 120, 440, 761, 1417, 1433
v. State, 30 Md. 112, 426
v. State, 30 N. J. L. 521, 301
v. Steamboat Co., R. M. Charlt. 342, 90
v. Stockton, 44 N. J. Eq. 179, 629
v. Stout, 52 N. J. L. 35, 314, 315
v. Tayloe, 105 Ala. 170, 1365
v. Thomas, 5 Coldw. 600, 1511, 1532
v. Thorne, 7 Paige Ch. 261, 505, 1392
v. Toney, 10 Lea 643, 464
v. United States, 10 Pet. 662, 629, 1214
v. United States, 49 Fed. 40, 1660, 1661
v. Vandegrift, 1 Marv. 5, 1329
v. Voorhies, 70 Tex. 356, 949
v. Weed, 96 Ga. 670, 1270
v. Weems, 5 Ind. 547, 1517
v. Williams, 15 N. Y. 502, 601
v. Willison, 50 Md. 138, 824
v. Wilson, 49 Ga. 476, 681
v. Wilson, 82 Ga. 206, 1614
v. Wilson, 50 Md. 138, 1208
v. Winfield, 8 Humph. 707, 100, 499, 502
v. Woodward, 12 Heisk. 499, 1445
v. Workman, 67 Fed. 347, 798
v. Wright, 2 Port. 230, 1422
v. Yuille, 3 Ala. 137, 526, 601, 632
Mayrhoper v. Board &c., 89 Cal. 110, 1734
Mays v. City of Cincinnati, 1 Ohio St. 268, 494, 1232, 1533
Mayson v. City of Atlanta, 77 Ga. 662, 1400
Maysville &c. Co. v. Wiggins, 20 Ky. L. 724, 879
Maywood Co. v. Village of Maywood, 140 Ill. 216, 1174, 1256
v. Village of Norwood Park, 138 Ill. 147, 1173
Mazet v. City of Pittsburgh, 137 Pa. St. 548, 654
McAdam v. Mayor &c., 36 Hun 340, 188
McAleer v. Angell, 19 R. I. 688, 711, 745

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

McAllister v. City of Albany, 18 Or. 426, 1590, 1608
v. City of Bridgeport, 72 Conn. 733, 1360
v. Pickuk, 84 Iowa 65, 1566
McAlpine v. Sweetser, 76 Ind. 78, 1572
McArthur v. City of Saginaw, 58 Mich. 357, 820, 1341
McAuliff v. Mayor &c., 155 Mass. 216, 1436, 1437, 1441
McAvoy v. City of New York, 65 N. Y. S. 274, 179
McBean v. City of Fresno, 112 Cal. 159, 722, 726
McBean & Co. v. Chandler, 9 Heisk. 349, 1271
McBrian v. City of Grand Rapids, 56 Mich. 95, 260, 647
McCabe v. Board &c., 46 Ind. 380, 663
v. City of Cambridge, 134 Mass. 484, 1623
McCafferty v. Guyer, 59 Pa. St. 109, 369
v. Spuyten Duyvil R. Co., 61 N. Y. 178, 1591
McCaffrey v. Smith, 41 Hun 117, 682
McCall v. Coates, 148 Pa. St. 462, 583
McCallie v. Mayor &c., 3 Head 317, 456, 986
McCann v. City of Albany, 42 N. Y. S. 94, 739, 1779
v. City of Waltham, 163 Mass. 344, 789
McCarlan v. Inhabitants &c., 57 N. J. Eq. 571, 719
McCarthy v. City of Portland, 67 Maine 167, 1595
v. City of Syracuse, 46 N. Y. 194, 222, 808, 821, 1159, 1208
v. Commonwealth, 110 Pa. St. 243, 43
v. Froelke, 63 Ind. 507, 185
v. Marsh, 5 N. Y. 263, 133
v. Village of Far Rockaway, 38 N. Y. S. 989, 1370
McCartney v. Chicago &c. R. Co., 112 Ill. 611, 589, 1706
McCash v. City of Burlington, 72 Iowa 26, 1226
McCauley v. School Dist., 133 Pa. St. 493, 1491
McChaffrey v. School Dist., 74 Wis. 100, 1482
McChesney v. City of Chicago, 152 Ill. 543, 1144, 1293
v. City of Chicago, 159 Ill. 223, 540
v. City of Chicago, 161 Ill. 110, 1277
v. People, 148 Ill. 221, 1278
v. Village of Hyde Park, 151 Ill. 634, 1259
McClain v. Incorporated Town of Garden Grove, 83 Iowa 235, 1581
McClay v. City of Lincoln, 32 Neb. 412, 393, 1515
McClellan v. Reynolds, 49 Mo. 312, 217
McClenticks v. Bryant, 1 Mo. 598, 216, 218
McCloskey v. Kreling, 76 Cal. 511, 1392
v. Mayor &c., 7 Hun 472, 894
v. Willis, 44 N. Y. S. 682, 1684
McCloud v. City of Columbus, 54 Ohio St. 439, 747
McClung v. St. Paul, 14 Minn. 420, 175
McClure v. City of Red Wing, 28 Minn. 186, 1215
v. Hill, 36 Ark. 268, 223
v. Oxford Tp., 94 U. S. 429, 210, 985, 1025, 1027, 1757
v. Supervisors &c., 3 Abb. Ct. App. 83, 1746
McComb v. Bell, 2 Minn. 295, 1533
McCombs v. City of Pittsburgh, 194 Pa. St. 348, 1798
McCombs v. Town Council &c., 15 Ohio 474, 8, 265
McConnell v. Dewey, 5 Neb. 385, 8
v. Hamm, 16 Kan. 288, 979, 980
v. Simpson, 36 Fed. 750, 911
McConville v. City of St. Paul, 75 Minn. 383, 1305
McCool v. Smith, 1 Black 459, 106
v. State, 23 Ind. 127, 530
McCord v. High, 24 Iowa 336, 221, 223, 224
v. Pike, 121 Ill. 288, 401
McCormack v. Patchin, 53 Mo. 33, 1234, 1288, 1297, 1378
McCormick v. Bay City, 23 Mich. 457, 299, 310, 1421
v. Burt, 95 Ill. 263, 221, 222, 1495
v. City of Harrisburg, 129 Pa. St. 213, 1273
v. Moss, 41 Ill. 352, 323
McCortle v. Bates, 29 Ohio St. 419, 280, 1480
McCoy v. Briant, 53 Cal. 247, 554, 646, 982, 1133
v. Corporation of Chillicothe, 3 Ohio 370, 1722
v. Curtice, 9 Wend. 17, 295
v. Washington Co., 3 Phila. 290, 1016
McCracken v. City of San Francisco, 16 Cal. 591, 242, 259, 291, 292, 553, 631, 637
v. Soucy, 29 Ill. App. 619, 198
v. Village of Markesan, 76 Wis. 499, 1641
McCrary v. City of Commanche, 34 S. W. 679, 66
McCraw v. Williams, 33 Gratt. 510, 196
McCray v. Town of Fairmount, 46 W. Va. 442, 1379, 1774
McCrea v. Chahoon, 54 Hun 577, 219, 939
v. Jacobs, 19 Abb. N. C. 188, 1415
McCready v. Guardians, 9 S. & R. 94, 295, 616
v. Sexton, 29 Iowa 356, 1166, 1505
v. Virginia, 94 U. S. 391, 137
McCrickart v. City of Pittsburgh, 88 Pa. St. 133, 246
McCrowell v. City of Bristol, 89 Va. 652, 509
v. Mayor &c., 5 Lea 685, 831
McCue v. Wapello Co., 56 Iowa 698, 198
McCulloch v. Ayer, 96 Fed. 178, 1393
v. Maryland, 4 Wheat. 316, 45, 46
McCullough v. Moss, 5 Denio 567, 1088
v. Talladega Insurance Co., 46 Ala. 376, 260
McCune v. Norwich Gas Co., 30 Conn. 521, 4, 6
McCunney v. City of New York, 58 N. Y. S. 138, 180
McCurdy v. Bowes, 88 Ind. 583, 863
v. Rogers, 21 Wis. 199, 217
McCutcheon v. Common Council &c., 43 Mich. 483, 814, 1586
v. Homer, 43 Mich. 483, 8
McDade v. City of Chester, 117 Pa. St. 414, 264, 820, 830
McDaniel v. Richards, 1 McC. 187, 134
McDaniell v. Tebbetts, 60 N. H. 497, 229
McDaniels v. Flower Brook &c. Co., 22 Vt. 274, 352
McDermott v. Board &c., 5 Abb. Pr. 422, 466
McDonald v. City of Ashland, 78 Wis. 251, 1210
v. City of New York, 59 N. Y. S. 16, 164, 928, 929, 931
v. City of Toledo, 63 Fed. 60, 1344

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

McDonald v. City of Troy, 36 N. Y. St. 704, 828
v. English, 85 Ill. 232, 1112
v. Massachusetts Gen'l Hospital, 120 Mass. 432, 806
v. Mayor &c., 68 N. Y. 23, 210, 233, 252, 253, 254, 257, 260 644, 645, 649, 894, 1212
v. Murphree, 45 Miss. 705, 1288
v. Payne, 114 Ind. 359, 679
McDonogh v. Murdoch, 15 How. 367, 563, 664
McDonough v. Gilman, 3 Allen 264, 811, 1095
McDougal v. Board &c., 4 Minn. 184, 1744, 1745
McDowell v. Massachusetts &c. Const. Co., 96 N. C. 514, 370
McElhaney v. Gilleland, 30 Ala. 183, 331
McElroy v. City Council &c., 65 Ga. 387, 798, 1075
v. Kansas City, 21 Fed. 257, 678, 1209
McEneney v. Town of Sullivan, 125 Ind. 407, 1258
McEwan v. City of Spokane, 16 Wash. 212, 741, 1779
McEwen v. City of Nashville, 36 S. W. 968, 739
McFadden v. Board &c., 74 Cal. 571, 1461
v. Town of Dresden, 80 Maine 134, 854
McFarland v. Gordon, 70 Vt. 455, 173
v. Triton Ins. Co., 4 Denio 392, 1422
McFarlane v. City of Chicago, 185 Ill. 242, 1297, 1301
v. City of Milwaukee, 51 Wis. 691, 1588
McGaffigan v. City of Boston, 149 Mass. 289, 1616
McGaffin v. City of Cohoes, 11 Hun 531, 1625
McGar v. Borough of Bristol, 71 Conn. 652, 1380, 1777, 1786
McGargell v. Hazleton Coal Co., 4 W. & S. 424, 196
McGarry v. Loomis, 63 N. Y. 104, 1375, 1595
McGarty v. Deming, 51 Conn. 422, 107, 1414
McGear v. Woodruff, 33 N. J. L. 213, 539, 541, 542, 1413
McGee's Appeal, 114 Pa. St. 470, 1317, 1319
McGee v. Laramore, 50 Mo. 425, 217
v. Mathis, 4 Wall. 143, 760
v. State, 103 Ind. 444, 1676
McGehee v. Mathis, 21 Ark. 40, 1270, 1508, 1521
v. Mayor &c., 69 Ga. 581, 1725
McGill v. Bruner, 65 Ind. 421, 1150
McGinnis v. Inhabitants &c., 176 Mass. 67, 792
McGinty v. City of Keokuk, 66 Iowa 725, 1802
McGivney v. Pierce, 87 Cal. 124, 115
McGlue v. City of Philadelphia, 10 Phila. 348, 893
McGonigle v. City of Allegheny, 44 Pa. St. 118, 1498
McGoodwin v. City of Franklin, 18 Ky. L. 752, 874
McGorty v. Deeming, 51 Conn. 422, 1419
McGovern v. Board &c., 57 N. J. L. 580, 753
McGowan v. Deyo, 8 Barb. 340, 311
McGrath v. City of Chicago, 24 Ill. App. 19, 92, 160, 167
McGraw v. Town of Marion, 98 Ky. 673, 804
McGraw's Estate, 111 N. Y. 66, 1487
McGrew v. Governor, 19 Ala. 89, 334
McGruder v. State, 83 Ga. 616, 106
McGuiness v. School Dist., 39 Minn. 499, 1491
McGuinn v. Peri, 16 La. An. 326, 1257
McGuire v. Atlantic City, 63 N. J. L. 91, 609
v. Brockman, 58 Mo. App. 307, 1308
v. City of Rapid City, 6 Dak. 346, 637
v. Galligan, 57 Mich. 38, 222
v. Spence, 91 N. Y. 303, 1375, 1595, 1631, 1635
v. Williams, 123 N. C. 349, 986
McGurn v. Board of Education, 133 Ill. 122, 121, 1474
McHale v. Easton &c. Transit Co., 169 Pa. St. 416, 1205, 1346
McHarrey v. School Trustees, 68 Ill. 140, 1483
McHenry v. Selvage, 18 Ky. L. 473, 1799
v. Township Board &c., 65 Mich. 9, 1675
McIlvain v. State, 87 Ind. 602, 530
McInerney v. City of Denver, 17 Colo. 302, 496, 531, 532, 541, 542, 543
McInery v. City of Galveston, 58 Tex. 334, 174, 175
McInstry v. Tanner, 9 Johns. 135, 195
McIntire v. State, 5 Blackf. 384, 704
v. Williamson, 8 Kan. App. 711, 1554
McIntosh v. City of Charleston, 45 S. C. 584, 563
McIntyre v. Board &c., 15 Colo. App. 78, 612, 1698
v. School Trustees, 3 Ill. App. 77, 322
McKay v. City of Buffalo, 9 Hun 401, 1097
v. City of Buffalo, 74 N. Y. 619, 1097
v. Welch, 6 N. Y. S. 358, 1050
McKeague v. City of Green Bay, 106 Wis. 577, 1366
McKean v. City of Mt. Vernon, 51 Iowa 306, 415
McKechnie Brew. Co. v. Trustees &c., 44 N. Y. S. 317, 1281, 1297, 1299
McKecknie v. Ward, 58 N. Y. 541, 320
McKee v. Bidwell, 74 Pa. St. 218, 1627
v. Brown, 23 La. An. 306, 1257
v. Lamon, 159 U. S. 317, 1700
v. McKee, 8 B. Mon. 433, 533
v. Town of Pendleton, 154 Ind. 652, 1151, 1266
v. Vernon Co., 3 Dill. 210, 998, 1014, 1022, 1023
McKelgue v. City of Janesville, 68 Wis. 50, 936, 1620, 1632
McKellar v. City of Detroit, 57 Mich. 158, 1586
McKenna, Ex parte, 126 Cal. 429, 1387, 1388
v. City of New York, 34 App. Div. 152, 88
v. City of St. Louis, 6 Mo. App. 320, 264
v. Edmundstone, 91 N. Y. 231, 106
v. Kimball, 145 Mass. 555, 1474
McKibbin v. Fort Scott, 35 Ark. 352, 533
McKinney v. Robinson, 84 Tex. 489, 902, 904
v. State, 68 Miss. 284, 909
v. Town of Salem, 77 Ind. 213, 1677
McKinnon v. Penson, 8 Ex. 319, 831
McKissick v. City of St. Louis, 154 Mo. 588, 1801
McKnight v. City of Pittsburgh, 91 Pa. St. 273, 802

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

McKnight v. Grant Parish, 30 La. An. 361, 1530
McKusick v. City of Stillwater, 44 Minn. 372, 1197
McLain v. Mariche, 60 Neb. 353, 1698
v. Snyder Tp. School Dist., 12 Pa. St. 204, 1480
McLaughlin v. Burroughs, 90 Mich. 311, 1656
v. Municipality, 5 La. An. 504, 700
v. Stephens, 3 Cr. C. C. 148, 607
McLauren v. City of Grand Forks, 6 Dak. 397, 570, 1131, 1259
McLaury v. McGregor City, 54 Iowa 717, 1637
McLean Co. v. City of Bloomington, 106 Ill. 209, 1245
v. Humphreys, 104 Ill. 378, 1071
McLellan v. Board &c., 15 Mo. App. 362, 1492
v. Young, 54 Ga. 399, 1744
McLendon v. City of La Grange, 107 Ga. 356, 1506
McLin v. City of New Berne, 70 N. C. 12, 1402
McLorinan v. Bridgewater Tp., 49 N. J. L. 624, 1045
McLoud v. Selby, 10 Conn. 390, 142, 341, 965, 1735
McMahon v. City of Dubuque, 107 Iowa 62, 789
v. Mayor &c., 66 Ga. 217, 370
McMannis v. Butler, 51 Barb. 436, 1559, 1562
McManus v. City of Philadelphia, 195 Pa. St. 304, 744
v. McDonough, 107 Ill. 95, 698
v. People, 183 Ill. 391, 511, 1149, 1274, 1277
McMasters v. Commonwealth, 3 Watts 292, 1233, 1266
McMicken v. City of Cincinnati, 4 Ohio St. 394, 697
McMillan v. Anderson, 95 U. S. 37, 694, 1537
v. Richards, 9 Cal. 365, 417, 1725
v. School Com'rs, 107 N. C. 609, 1494
McMillen v. Anderson, 95 U. S. 37, 1238, 1239
McNally v. City of Cohoes, 53 Hun 202, 829, 1615
McNamara v. Estes, 22 Iowa 246, 1232
v. Village of Clintonville, 62 Wis. 207, 1802
McNeal v. City of Waco, 89 Tex. 83, 724
v. Mayor &c., 51 N. J. L. 444, 1738
McNerney v. Reading City, 150 Pa. St. 611, 1340
McNulty v. City of Cambridge, 130 Mass. 275, 1622
McNutt v. Livingston, 7 Sm. & M. 641, 226
McOsker v. Burrell, 55 Ind. 425, 221
McPheeters v. Wright, 110 Ind. 519, 1489
McPherson v. City of Buffalo, 43 N. Y. S. 609, 1344
v. Foster, 43 Iowa 48, 890, 891, 1023, 1368, 1459, 1524
v. Village of Chebanse, 114 Ill. 46, 494
McPike v. Pen, 48 Mo. 525, 1722
v. Pen, 51 Mo. 63, 368
McQueen v. City of Elkhart, 14 Ind. App. 671, 789
McQuiddy v. Smith, 67 Mo. App. 205, 1132, 1299
McQuillen v. Hatton, 42 Ohio St. 202, 685
McRea v. Mayor &c., 59 Ga. 168, 496
McSpedon v. Mayor &c., 7 Bosw. 601, 253
McTeer v. Lebow, 85 Tenn. 121, 222
McTwiggan v. Hunter, 19 R. I. 265, 745
McVeany v. Mayor &c., 80 N. Y. 185, 213, 380
McVerry v. Boyd, 89 Cal. 304, 1233
McVichie v. Town of Knight, 82 Wis. 137, 340, 344, 346, 347
McWhorter v. People, 65 Ill. 290, 973
Meacham v. Fitchburg R. Co., 4 Cush. 291, 704
Mead v. City of Chicago, 186 Ill. 54, 511, 512, 1275, 1279
v. City of New Haven, 40 Conn. 72, 1097
v. City of Pittsburgh, 194 Pa. St. 392, 1773
v. Inhabitants &c., 139 Mass. 341, 559, 672
Meadowcraft v. People, 154 Ill. 416, 1303
Meadow Dam Co. v. Gray, 30 Maine 547, 994
Meagher v. Storey Co., 5 Nev. 244, 196, 213, 1445
Means v. Hendershott, 24 Iowa 78, 671
v. Webster, 23 Ind. 432, 957
Meares v. Commissioners &c. of Wilmington, 9 Ired. L. 73, 8, 265
Mears v. City of Spokane, 22 Wash. 323, 1366
Medical Inst. v. Patterson, 1 Den. 61, 51, 84
Medland v. Linton, 60 Neb. 249, 1239, 1240, 1241, 1244, 1277
Meech v. City of Buffalo, 29 N. Y. 198, 720, 1232
Meek v. McClure, 49 Cal. 623, 1552, 1725
Meeker v. Van Rensselaer, 15 Wend. 397, 1122, 1394
Meggett v. City of Eau Claire, 81 Wis. 326, 558, 593, 1204, 1252, 1253
Meiners v. City of St. Louis, 130 Mo. 274, 1373
Meinzer v. City of Racine, 68 Wis. 241, 1225
Meissner v. Boyle, 20 Utah 316, 174, 1767
Mellor v. Burgess &c., 191 Pa. St. 562, 1331
Melon St., In re, 1 Pa. Super. Ct. 63, 1318
Melvin v. Lisenby, 72 Ill. 63, 991
Memphis v. Brown, 97 U. S. 300, 1531
v. Laski, 9 Heisk. 511, 1745
v. United States, 97 U. S. 293, 765, 1529, 1531
Memphis Freight Co. v. Mayor &c., 4 Coldw. 419, 685
Memphis Gaslight Co. v. State, 6 Coldw. 310, 1512
Memphis &c. R. Co. v. Payne, 37 Miss. 700, 706
v. Railroad Com'rs, 112 U. S. 619, 1689
Menasha v. Hazard, 102 U. S. 81, 995, 1001
Mendel v. City of Wheeling, 28 W. Va. 233, 264, 786, 1394
Mendenhall v. Burton, 42 Kan. 570, 59, 64, 87, 393, 1514
Mendocino Co. v. Morris, 32 Cal. 145, 310
Menges v. City of Albany, 56 N. Y. 374, 697, 1829
Menken v. City of Atlanta, 78 Ga. 668, 497
Menominee Water Co. v. City of Menominee, 124 Mich. 386, 848
Meranda v. Spurlin, 100 Ind. 380, 696, 1573

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Mercantile &c. Co. v. Collins &c. R. Co., 101 Fed. 347, 1813
Merced Co. v. Fleming, 111 Cal. 46, 540
Mercer v. Corbin, 117 Ind. 450, 1314
v. Floyd, 53 N. Y. S. 433, 926
v. Woodgate, L. R. 5 Q. B. 26, 1557, 1561
Mercer Co. v. Hackett, 1 Wall. 83, 1000, 1001, 1006, 1007, 1018, 1031
v. Pittsburg &c. R. Co., 27 Pa. St. 389, 1010
v. Provident Life &c. Co., 72 Fed. 623, 1002, 1032, 1757
Merchants' &c. Bank v. Bergen Co., 115 U. S. 384, 210, 1000, 1027, 1028
Merchants' Bank v. Cook, 4 Pick. 405, 142
v. State Bank, 10 Wall. 604, 1004
Merchants' Nat'l Bank v. McKinney, 2 S. Dak. 106, 967
Merchants' Realty Co. v. City of St. Paul, 77 Minn. 343, 1310
Meredith v. City of Perth Amboy, 63 N. J. L. 520, 1284
Meriwether v. Garrett, 102 U. S. 472, 81, 103, 105, 124, 142, 233, 457, 458 629, 1522, 1526, 1529, 1533, 1544
Merkee v. City of Rochester, 13 Hun 157, 530
Merrell v. Campbell, 49 Wis. 535, 1745
Merriam, Petition of, 8 N. Y. 596, 1539
v. City of New Orleans, 14 La. An. 318, 517, 1520
Merrick v. Burlington &c. Co., 11 Iowa 74, 260, 715
v. Inhabitants &c., 12 Allen 500, 1514
v. Mayor &c., 43 Md. 219, 699
v. Wallace, 19 Ill. 486, 228
Merrifield v. City of Worcester, 110 Mass. 216, 1585
Merrill v. Abbott, 62 Ind. 549, 1254
v. Humphrey, 24 Mich. 170, 1288
v. Inhabitants &c., 26 Maine 234, 1613
v. Inhabitants &c., 78 Maine 200, 1633
v. Marshall Co., 74 Iowa 24, 1674
v. Monticello, 138 U. S. 673, 562, 636, 838, 971, 973, 978, 1013
v. Plainfield, 45 N. H. 126, 651, 668, 1730
v. Shields, 57 Neb. 78, 1793
v. Town of Monticello, 14 Fed. 628, 863
Merrill &c. Co. v. City of Merrill, 80 Wis. 358, 877
Merrimack Co. v. City of Concord, 66 N. H. 389, 1069
v. Grafton Co., 63 N. H. 550, 1042
Merrimack River Sav. Bank v. City of Lowell, 152 Mass. 556, 1461
Merritt v. City of Kewanee, 175 Ill. 537, 1134, 1135
v. Farriss, 22 Ill. 303, 1485
v. Hinton, 55 Ark. 12, 172
v. School Dist., 54 Ark. 468, 1487, 1496
v. Village of Portchester, 71 N. Y. 309, 570, 1133, 1201, 1255
Mersey Docks v. Gibbs, 11 H. L. Cas. 686, 8
Merwin v. City of Chicago, 45 Ill. 133, 1745
v. Rogers, 24 N. Y. St. 496, 334
v. Rogers, 28 N. Y. St. 404, 221
Merwine v. Monroe Co., 141 Pa. St. 162, 905, 906
Merz v. City of Brooklyn, 33 N. Y. St. 577, 829
Merz v. Missouri Pac. R. Co., 88 Mo. 672, 589, 1356
Merzbach v. City of New York, 163 N. Y. 16, 180
Messeck v. Board &c., 50 Barb. 190, 1718
Metcalf v. Andrews, 7 Atl. 4, 164
v. City of St. Louis, 11 Mo. 102, 467, 1099
v. State, 21 Tex. App. 174, 1493
Metcalfe v. City of Seattle, 1 Wash. 297, 374, 989
Methodist &c. Church, In re, 66 N. Y. 395, 1525
Methodist Church v. Mayor, 6 Gill 391, 1216
Metropolitan Board &c. v. Barrie, 34 N. Y. 657, 1083, 1811
v. Heister, 37 N. Y. 661, 1083
Metropolitan &c. Co. v. Newton, 4 N. Y. S. 593, 617
Metropolitan City R. Co. v. City of Chicago, 96 Ill. 620, 1706
Metropolitan Gas Light Co., Matter of, 85 N. Y. 526, 1256
Metropolitan Tel. Co. v. Colwell Lead Co., 67 How. Pr. 365, 1581
Metsker v. Neally, 41 Kan. 122, 190
Metzger v. Attica R. Co., 79 N. Y. 171, 825
Meuser v. Risdon, 36 Cal. 239, 282
Meyer v. Brown, 65 Cal. 583, 1522
v. City of Muscatine, 1 Wall. 384, 1001, 1016
v. Fromm, 108 Ind. 208, 482, 1258
v. Jones, 20 Ky. L. 1632, 1392
v. School Dist., 4 S. D. 420, 998
v. Village of Teutopolis, 131 Ill. 552, 1317, 1347
Meyers v. Chicago &c. R. Co., 57 Iowa 555, 500
v. City of Jeffersonville, 145 Ind. 431, 1700
v. Hudson Co. Elec. Co., 63 N. J. L. 573, 586, 1791
Michael v. City of Mattoon, 172 Ill. 394, 1278
Michel v. Police Jury, 9 La. An. 67, 1306
Michener v. City of Philadelphia, 118 Pa. St. 535, 593, 1195, 1234, 1252
Michie &c., In re, 11 Up. Can. C. P. 379, 1258
Michigan &c. R. Co. v. Barnes, 44 Mich. 222, 702
Michigan Tel. Co. v. City of Charlotte, 93 Fed. 11, 586
Middlesborough Town &c. Co. v. Knoll, 21 Ky. L. 1399, 719, 1283, 1789
Middlesex Co. v. City of Lowell, 149 Mass. 509, 1177
Middlesex R. Co. v. City of Charleston, 8 Allen 330, 1509
v. Wakefield, 103 Mass. 261, 1159, 1355
Middleton v. Greeson, 106 Ind. 18, 626, 863, 1479, 1480
v. Mullica Tp., 112 U. S. 433, 1013
v. Railroad Co., 26 N. J. Eq. 269, 524
v. State, 120 Ind. 166, 308, 650
Midland School Districts, 40 Mich. 551, 861
Mikesell v. Durkee, 34 Kan. 509, 585, 1322
Miles v. City of Lynn, 130 Mass. 398, 1366
v. City of Worcester, 154 Mass. 511, 810
v. Town of Albany, 59 Vt. 79, 1541
v. Wells, 22 Utah 55, 1652
Milhau v. Sharp, 27 N. Y. 611, 568, 579, 618, 637, 1106

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Milhau v. Sharp, 15 Barb. 193, 830
v. Sharp, 17 Barb. 435, 282, 586
Milk v. Kent, 60 Ind. 226, 419
Millard v. Board &c., 19 Ill. App. 48, 1476
v. Jenkins, 9 Wend. 298, 221
Mill Creek Sewer, In re, 196 Pa. St. 183, 1311
Miller v. Board, 66 Ind. 162, 971
v. Board &c., 37 N. Y. S. 766, 742
v. Bradford, 12 Iowa 14, 228
v. Brown, 56 N. Y. 383, 335
v. Callaway, 32 Ark. 666, 198
v. City of Amsterdam, 149 N. Y. 288, 1134, 1135, 1236
v. City of Milwaukee, 14 Wis. 699, 1306
v. City of Minneapolis, 75 Minn. 131, 785
v. City of St. Paul, 38 Minn. 134, 264, 1585, 1614
v. Embree, 88 Ind. 133, 944
v. English, 21 N. J. L. 317, 371
v. Gorman, 38 Pa. St. 331, 1717
v. Grice, 2 Rich. L. 27, 335
v. Horton, 152 Mass. 540, 595, 1080, 1116
v. Jones, 80 Ala. 89, 622
v. Lerch, 1 Wall. Jr. 210, 564
v. Mayor &c., 47 Ala. 163, 1257, 1258
v. Mayor &c., 47 N. J. Eq. 62, 1180, 1216
v. Mayor &c., 109 U. S. 385, 801
v. McWilliams, 50 Ala. 427, 142, 1527
v. Moore, 3 Humph. 189, 323
v. O'Reilly, 84 Ind. 168, 535
v. Perris Irr. Dist., 85 Fed. 693, 1028
v. Perris Irr. Dist., 99 Fed. 143, 1006
v. Rucker, 1 Bush 135, 221
v. Supervisors, 25 Cal. 93, 187, 199
v. Town of Berlin, 13 Blatchf. 245, 1027
v. Trustees &c., 88 Ill. 26, 1712
v. Warner, 59 N. Y. S. 956, 1820
v. Webster City, 94 Iowa 162, 580
v. White River School Tp., 101 Ind. 503, 862
Millett v. People, 117 Ill. 294, 734
Millholland v. Bryant, 39 Ind. 363, 158
Milliard v. City of Lafayette, 5 La. An. 112, 700
Milliken v. City Council &c., 54 Tex. 388, 501, 502
Million v. Soule, 15 Wash. 261, 958
Mills v. Belbrough, 19 N. Y. S. 176, 1409
v. Board &c., 50 Ind. 436, 1725
v. Charleton, 29 Wis. 400, 558, 1531, 1538
v. City of Brooklyn, 32 N. Y. 489, 263, 819, 821, 1159, 1208, 1584, 1585, 1586
v. City of Chicago, 182 Ill. 249, 512
v. Gleason, 11 Wis. 470, 258, 287, 715, 837, 971, 973, 992
v. Hall, 9 Wend. 316, 1106
v. Richland Tp., 72 Mich. 100, 416
v. Thornton, 26 Ill. 300, 1499
v. Williams, 11 Ired. 558, 104, 105
Millsaps v. Mayor &c., 37 La. An. 641, 615
Mills Co. v. Burlington &c. R. Co., 47 Iowa 66, 659
Milner v. City of Pensacola, 2 Woods 632, 92, 405, 409, 410, 1519
Miltenberger v. Cooke, 18 Wall. 421, 633
Milward v. Thatcher, 2 T. R. 81, 185, 198
Milwaukee v. Koeffler, 116 U. S. 219, 1697, 1722
Milwaukee Electric &c. Co. v. City of Milwaukee, 95 Wis. 39, 1247, 1812
Milwaukee Industrial School v. Supervisors &c., 40 Wis. 328, 1071, 1072
Milwaukee &c. R. Co. v. City of Faribau.t, 23 Minn. 167, 591, 686
Mims v. West, 38 Ga. 18, 1026
Miner v. Loggins, 14 Tex. Civ. App. 15, 958
v. President &c., 27 N. Y. 155, 1510
Mineralized Rubber Co. v. City of Cleburne, 22 Tex. Civ. App. 621, 730
Miners' Bank v. United States, 1 Greene 553, 4, 6
Miners' Ditch Co. v. Zellerbach, 37 Cal. 543, 5, 233, 253
Minick v. City of Troy, 19 Hun 253, 1625
v. City of Troy, 83 N. Y. 514, 1746, 1790
Minis v. Minis, 35 Ala. 23, 228
Minneapolis Gas-Light Co. v. City of Minneapolis, 36 Minn. 159, 191, 282, 1539
Minneapolis &c. R. Co. v. Becket, 75 Iowa 183, 1674
v. Woodworth, 32 Minn. 452, 708
Minnesota Linseed Oil Co. v. Palmer, 20 Minn. 468, 1202, 1232
Minnesota &c. R. Co. v. District Court, 71 N. W. 27, 1287
Minnesota Trans. R. Co. v. District Court &c., 68 Minn. 242, 1299
Minor v. Bank, 1 Peters 46, 211
v. Happersett, 21 Wall. 162, 140, 369
Minot v. Curtis, 7 Mass. 441, 435
v. Inhabitants &c., 112 Mass. 1, 641, 671
Minturn v. Larue, 23 How. 435, 88, 565, 598, 627, 642
Missano v. Mayor &c., 160 N. Y. 123, 250, 929
Mississippi v. Johnson, 4 Wall. 475, 1488
Mississippi &c. R. Co. v. Ward, 67 U. S. 485, 1109
Missouri v. Lewis, 101 U. S. 22, 140, 1410
Missouri Pac. R. Co. v. City of Wyandotte, 44 Kan. 32, 489, 1133
v. Hennessey, 75 Tex. 155, 1627
v. Houseman, 41 Kan. 300, 694
v. Humes, 115 U. S. 512, 698
Missouri River &c. R. Co. v. Commissioners &c., 12 Kan. 230, 260, 986
Missouri &c. Trust Co. v. Smart, 51 La. An. 416, 522
Mitchell v. Brown, 18 N. H. 315, 303, 351, 355, 358
v. Burlington, 4 Wall. 270, 561, 764, 838, 972, 985
v. City of Milwaukee, 18 Wis. 92, 1702, 1722
v. City of Negaunee, 113 Mich. 359, 1549
v. City of Plattsburg, 33 Mo. App. 555, 1627
v. City of Rockland, 41 Maine 363, 1099
v. City of Rockland, 45 Maine 496, 234, 251, 647
v. City of Rockland, 52 Maine 118, 9, 148, 1097, 1433
v. City of Worcester, 129 Mass. 525, 1622
v. Harmony, 13 How. 115, 1385
v. Illinois &c. R. Co., 68 Ill. 286, 698

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Mitchell v. Inhabitants &c., 81 Maine 482, 967
v. Tallapoosa Co., 30 Ala. 130, 774
v. Treasurer &c., 25 Ohio St. 143, 13
v. United States, 21 Wall. 350, 1042
Mitchell Co. v. City Nat'l Bank, 15 Tex. Civ. App. 172, 874
Mix v. People, 106 Ill. 425, 1276
v. Ross, 57 Ill. 121, 1544
Moberly v. Hogan, 131 Mo. 19, 1284
Moberry v. City of Jeffersonville, 38 Ind. 198, 1191, 1256, 1258
Mobile v. United States, 116 U. S. 289, 124
v. Watson, 116 U. S. 289, 71, 409, 412, 454
Mobile Co. v. Kimball, 102 U. S. 691, 771, 817, 1230, 1372, 1557, 1576, 1577
Mobile &c. R. Co. v. Kennerly, 74 Ala. 566, 1545
Mobile Sav. Bank v. Board &c., 24 Fed. 110, 991, 1027, 1028
Mock v. City of Santa Rosa, 126 Cal. 330, 218, 1731, 1755
Moede v. Stearns Co., 43 Minn. 312, 1496
Moers v. City of Reading, 21 Pa. St. 188, 119, 763
Moffett v. South Park, 138 Ill. 620, 1561
Moffit v. Brainard, 92 Iowa 122, 1317
v. Jordan, 127 Cal. 622, 1240, 1283, 1800
v. State, 40 Ind. 217, 1095
Moger v. Escott, L. R. 7 C. P. 158, 128
Mohawk Bridge Co. v. Utica &c. R. Co., 6 Paige 554, 568, 584
Moiles v. Watson, 60 Mich. 415, 1487
Moir v. Hopkins, 16 Ill. 313, 212
Molett v. Keenan, 22 Ala. 484, 692
Moll v. School Directors, 23 Ill. App. 508, 967, 1495
Mollandin v. Union Pac. R. Co., 14 Fed. 394, 678
Moller v. City of Galveston, 23 Tex. Civ. App. 693, 989, 1015, 1018
Monaghan v. City of Philadelphia, 28 Pa. St. 207, 1527
Monje v. City of Grand Rapids, 122 Mich. 645, 929, 1325
Monk v. Town of New Utrecht, 104 N. Y. 552, 777, 778, 816, 1324, 1574
Monongahela Bridge Co. v. Bevard, 11 Atl. 575, 1631
Monongahela City v. Fischer, 111 Pa. St. 9, 1587, 1597, 1598
Monroe v. City of Lawrence, 44 Kan. 607, 601
v. Collins, 17 Ohio St. 665, 369, 370, 371
Monroe Co. v. City of Rochester, 34 N. Y. S. 533, 1296
v. Flynt, 80 Ga. 489, 1735
v. Teller, 51 Iowa 670, 1068
Montford v. Allen, 111 Ga. 18, 1295, 1543
Montgomery v. Board &c., 22 Wis. 69, 663
v. City of Des Moines, 55 Iowa 101, 1619
v. Hernandez, 12 Wheat. 129, 455
v. St. Mary's Tp., 43 Fed. 362, 1014
v. Wasem, 116 Ind. 343, 1201
Montgomery Co. v. Auchley, 92 Mo. 126, 1487, 1740
v. Auchley, 103 Mo. 492, 914, 1487
v. Menefee Co. Court, 93 Ky. 33, 440, 1540
Montgomery Gaslight Co. v. City Council, 87 Ala. 245, 1465, 1466
Montgomery St. R. Co. v. Sayre, 72 Ala. 443, 698
Montieth v. Parker, 36 Or. 170, 952
Montrose v. State, 61 Miss. 429, 1417
Moody v. Mayor, 43 Barb. 282, 1095
v. Village of Saratoga, 45 N. Y. S. 365, 1377
Moody & Co. v. Chadwick, 52 La. An. 1888, 1271, 1309
Mooers v. Smedley, 6 Johns. Ch. 28, 1287, 1718
Mooney v. Clark, 69 Conn. 241, 710, 1699, 1731
v. Kennett, 19 Mo. 551, 85, 538
Moor v. City of Richmond, 85 Va. 538, 1626
Moore v. Atlanta, 70 Ga. 611, 1209
v. Beattie, 33 Vt. 219, 344, 362
v. Board &c., 2 Wyo. 8, 1725
v. City of Albany, 92 N. Y. 396, 257, 720, 1205
v. City of Mattoon, 163 Ill. 622, 1148
v. City of Minneapolis, 43 Minn. 418, 602
v. City of Platteville, 78 Wis. 644, 1210
v. City of Richmond, 85 Va. 538, 1636
v. City of St. Paul, 61 Minn. 427, 604
v. City of Waco, 85 Tex. 206, 1566
v. Cline, 61 Ind. 113, 1191
v. Commissioners &c., 62 N. J. L. 386, 506
v. Directors, 59 Pa. St. 232, 1728
v. District of Columbia, 12 App. D. C. 537, 502
v. Fessenbeck, 88 Ill. 422, 1483
v. Gadsden, 93 N. Y. 12, 1345, 1588
v. Graves, 3 N. H. 408, 312
v. Huntington, 31 W. Va. 842, 1631, 1634, 1635, 1636, 1638
v. Illinois, 14 How. 13, 607
v. Inhabitants &c., 32 Maine 46, 1599, 1635
v. Inhabitants &c., 38 Maine 204, 1332
v. Madison Co., 38 Ala. 670, 322
v. Mayor &c., 107 Ga. 704, 1805
v. Mayor &c., 73 N. Y. 238, 233, 239, 240, 655, 746
v. Mayor &c., 4 Sandf. 456, 693
v. Newfield, 4 Maine 44, 344, 365, 965, 1485
v. School Directors, 59 Pa. St. 232, 1540
v. State, 9 Mo. 334, 309
v. State, 11 Lea 35, 533
v. Village of Fairport, 32 N. Y. S. 633, 1373
Moose v. Carson, 104 N. C. 431, 1214
Mooser v. White, 29 Mich. 59, 1540
Moral School Tp. v. Harrison, 74 Ind. 93, 217
Moran v. Commissioners of Miami Co., 2 Black 722, 1000, 1018
v. Lindell, 52 Mo. 229, 1259
v. Long Island City, 101 N. Y. 439, 88, 108
v. Mayor &c., 58 N. J. L. 653, 1291
v. New Orleans, 112 U. S. 69, 492
v. Pullman &c. Co., 134 Mo. 641, 527, 786, 1790
v. Rennard, 3 Brewst. 601, 221
v. Thompson, 20 Wash. 525, 513, 712, 737
Morano v. Mayor, 2 La. 217, 580, 581, 1402, 1403
Morbeck v. State, 28 Ind. 86, 319
Morey v. Brown, 42 N. H. 373, 1751

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Morford v. Unger, 8 Iowa 82, 58, 61, 83, 122, 383, 393, 426, 1517
Morgan v. Beloit, 7 Wall. 613, 383, 424, 438
v. Chicago &c. R. Co., 36 Mich. 428, 693
v. City of Denver, 14 Colo. App. 147, 208, 210
v. City of Dubuque, 28 Iowa 575, 1306
v. City of Hollowell, 57 Maine 375, 814, 1594
v. City of Rhinelander, 105 Wis. 138, 928
v. Commonwealth, 55 Pa. St. 456, 1522
v. Cree, 46 Vt. 773, 1545
v. Dudley, 18 B. Mon. 693, 221
v. Long, 29 Iowa 434, 328
v. Menzies, 60 Cal. 341, 254
v. Parham, 16 Wall. 471, 1502
v. Quackenbush, 22 Barb. 72, 197, 381
v. Village of Penn Yan, 59 N. Y. S. 504, 1328, 1360
Morgan Co. v. Seaton, 122 Ind. 521, 842, 1040
Morgan Steamship Co. v. Louisiana Board &c., 118 U. S. 455, 1101
Morley v. Mayor &c., 12 N. Y. S. 609, 177, 203
v. Town of Metamora, 78 Ill. 394, 211, 322, 324
v. Village of Buchanan, 124 Mich. 128, 791
Morrell v. Sylvester, 1 Greenl. 248, 308
Morrill v. State, 38 Wis. 428, 1537
v. Tehema Mills &c. Co., 10 Nev. 25, 1737
v. Thurston, 46 Vt. 732, 335
Morris v. Baltimore, 5 Gill 244, 247
v. Barber Asphalt Pav. Co., 5 Lack. Leg. N. 129, 725
v. Board &c., 131 Ind. 285, 1075
v. City of Columbus, 102 Ga. 792, 1762
v. Kasling, 79 Tex. 141, 671
v. Mayor &c., 6 Lea 337, 1517
v. People, 3 Denio 381, 763
v. Philadelphia, 195 Pa. St. 372, 1340
v. Powell, 125 Ind. 281, 371
v. Sea Girt Land Imp. Co., 38 N. J. Eq. 304, 688
v. State, 62 Tex. 728, 120
v. State, 65 Tex. 53, 448
v. Taylor, 31 Or. 62, 876, 1021
Morris & Cummings Dredging Co. v. Mayor &c., 64 N. J. L. 587, 1352
Morris &c. R. Co. v. Mayor &c., 64 N. J. L. 148, 1251
v. Pruden, 20 N. J. Eq. 530, 1706
Morris Square, 2 Hill 14, 1724
Morrison v. City of Lawrence, 98 Mass. 219, 819, 1424
v. City of Madison, 96 Wis. 452, 1326, 1802
v. City of Syracuse, 65 N. Y. S. 939, 1316, 1326, 1374
v. Fayette Co., 127 Pa. St. 110, 940
v. Hershire, 32 Iowa 271, 1234, 1245, 1271
v. Howe, 120 Mass. 565, 335
v. Inhabitants &c., 36 N. J. L. 219, 1741
v. Lawrence, 98 Mass. 219, 299
v. McDonald, 21 Maine 550, 189, 192
v. McFarland, 51 Ind. 206, 221, 222
v. Wasson, 79 Ind. 477, 1721
Morrow v. Weed, 4 Iowa 77, 693
Morrow Co. v. Hendryx, 14 Or. 397, 434
Morse v. City of West Port, 110 Mo. 502, 582, 1129
v. City of Westport, 136 Mo. 276, 1139, 1147
v. City of Worcester, 139 Mass. 389, 811
v. Hitchcock Co., 19 Neb. 566, 429
v. Minneapolis &c. R. Co., 30 Minn. 65, 1627
v. Stocker, 1 Allen 150, 1178
v. Town of Richmond, 41 Vt. 435, 1112, 1613
v. Williamson, 35 Barb. 472, 335
Morseman v. City of Ionia, 32 Mich. 283, 695
Morton v. Carlin, 51 Neb. 202, 1030, 1698
v. Comptroller-General, 4 S. C. 430, 224
v. Mayor &c., 111 Ga. 162, 1387
v. Youngerman, 89 Ky. 505, 162
Morville v. American Tract. Soc., 123 Mass. 129, 240, 633
Moser v. Shamleffer, 39 Kan. 635, 165, 168
Moses v. Pittsburg &c. R. Co., 21 Ill. 515, 588, 1706
v. St. Louis Sectional Dock Co., 84 Mo. 242, 694
Mosher v. Independent School Dist., 44 Iowa 122, 890
Mosier v. City of Des Moines, 31 Iowa 174, 415
Mosley v. Walker, 7 B. & C. 40, 1402
Moss v. City Council &c., 93 Ga. 797, 788
v. Cummings, 44 Mich. 359, 1727
v. Harpeth Academy, 7 Heisk. 283, 971
v. Overseers of St. Michael, 7 Man. & G. 72, 128
v. Shear, 25 Cal. 38, 1519
v. State, 10 Mo. 338, 326
v. Village of Oakland, 88 Ill. 109, 488
Mossman v. Forest, 27 Ind. 233, 696
Mott v. Hicks, 1 Cowen 513, 216
v. Lewis, 65 N. Y. S. 31, 1773
v. United States Trust Co., 19 Barb. 568, 1017
Motz v. City of Detroit, 18 Mich. 496, 1224, 1253, 1268, 1269, 1723
Moulton v. City of Evansville, 25 Fed. 382, 998, 1007, 1023
v. Inhabitants &c., 51 Maine 127, 1332, 1601
Moultrie Co. v. Fairfield, 105 U. S. 370, 995, 996
v. Rockingham &c. Sav. Bank, 92 U. S. 631, 1001, 1022
Moundsville v. Fountain, 27 W. Va. 182, 1399, 1415, 1418
Mount Adams &c. R. Co. v. City of Cincinnati, 25 Wkly. Law Bull. 91, 615, 616
Mount Morris, In re, 2 Hill 14, 1723
Mount Pleasant v. Beckwith, 100 U. S. 514, 71, 74, 89, 383, 408, 412, 424, 445, 1529
v. Breeze, 11 Iowa 399, 526
Mount Pleasant Borough v. Baltimore &c. R. Co., 138 Pa. St. 365, 1250
Mountain v. Multnomah Co., 16 Or. 279, 638
Mower v. Inhabitants &c., 9 Mass. 247, 7, 9, 148, 776, 777, 778, 1750
Mowry v. Mowry, 20 R. I. 74, 1549
Mozley v. Alston, 1 Phill. 790, 296
Muhler v. Hedekin, 119 Ind. 481, 202
Mulberger v. Beurhaus, 102 Wis. 1, 1731
Mulcairns v. City of Janesville, 67 Wis. 24, 818

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Mulholland v. Mayor &c., 113 N. Y. 631, 1188
Mullarky v. Town of Cedar Falls, 19 Iowa 21, 282, 977
Mullen v. Mayor &c., 12 N. Y. S. 269, 183
Muller v. Dows, 94 U. S. 444, 3
v. Kansas, 123 U. S. 623, 1677
Mulligan v. City of New Britain, 69 Conn. 96, 1338
v. Smith, 59 Cal. 206, 694, 1134, 1137, 1236, 1258
Mullikin v. State, 7 Blackf. 77, 1483
Mumford v. Memphis &c. R. Co., 2 Lea 393, 319
Mumma's Appeal, 127 Pa. St. 474, 1062
Muncey v. Joest, 74 Ind. 409, 693, 1572
Mundell v. City of Pasadena, 87 Cal. 520, 183
Municipality v. Duncan, 2 La. An. 182, 1520
v. Dunn, 10 La. An. 57, 1230, 1233, 1514
v. Louisiana State Bank, 5 La. An. 394, 1510
v. Michaud, 6 La. An. 605, 1515
v. Millaudon, 12 La. An. 769, 1533
v. Morgan, 1 La. An. 111, 520
v. White, 9 La. An. 446, 1514
Municipal Sec. Co. v. Baker Co., 33 Or. 338, 952
Munn, In re, 63 N. Y. S. 22, 1278, 1296
v. Illinois, 94 U. S. 113, 5, 6, 574, 1386
Munro v. Merchant, 28 N. Y. 9, 134
Munsfield v. People, 164 Ill. 611, 1144
Munson v. Fenno, 87 Ill. App. 655, 541
v. Mayor &c., 3 Fed. 338, 779
v. Minor, 22 Ill. 595, 1721
Murdock v. Academy, 12 Pick. 244, 207
v. District of Columbia, 22 Ct. Cl. 464, 1185
Murdough v. Inhabitants &c., 165 Mass. 109, 711
Murphy v. City of Albina, 22 Or. 106, 1212
v. City of Brooklyn, 98 N. Y. 642, 1557
v. City of Chicago, 29 Ill. 279, 1706
v. City of Chicago, 186 Ill. 59, 1132
v. City of Indianapolis, 83 Ind. 76, 1632
v. City of Jacksonville, 18 Fla. 318, 670, 858
v. City of Louisville, 9 Bush 189, 646, 647, 1254
v. City of Peoria, 119 Ill. 509, 1175, 1378
v. City of Yonkers, 60 N. Y. S. 940, 736, 739
v. Commissioners, 14 Minn. 67, 1064
v. Dayton, 8 Ohio Com. Pl. 354, 1374
v. East Portland, 42 Fed. 308, 892
v. Farmers' Bank &c., 20 Pa. St. 417, 1693
v. Hall, 68 Wis. 202, 559
v. Inhabitants &c., 176 Mass. 422, 792
v. Mayor &c., 6 Houst. 108, 1725, 1727
v. People, 183 Ill. 185, 1310
v. People, 2 Cow. 815, 1414
v. Ramsey, 114 U. S. 15, 47
v. Southern R. Co., 99 Ga. 207, 1707
Murray, In re, 46 N. Y. S. 172, 1823
v. City of Chicago, 175 Ill. 340, 1287
v. Hoboken Land Co., 18 How. 272, 1049
Murray v. Lardner, 2 Wall. 110, 1018, 1020
v. Richmond &c. R. Co., 93 N. C. 92, 1633
v. Tucker, 10 Bush 240, 707
Muscatine &c. R. Co. v. Horton, 38 Iowa 33, 221
Muscatine Turnverein v. Funck, 18 Iowa 469, 447
Musgrave v. Nevison, 1 Str. 584, 271
Musgrove v. St. Louis Church, 10 La. An. 431, 1086
Mussell v. Tama Co., 73 Iowa 101, 1052
Musselman v. Commonwealth, 7 Pa. St. 240, 309
v. Manley, 42 Ind. 462, 300
Musser v. Johnson, 42 Mo. 74, 217
Mutchler v. Easton City, 9 Pa. Co. Ct. 613, 754
Mutual &c. Co. v. Wilcox, 8 Biss. C. C. 197, 310
Mutual &c. Ins. Co. v. City of Elizabeth, 42 N. J. L. 235, 645
v. Eastern &c. R. Co., 38 N. J. Eq. 132, 693
Mutual Loan &c. Ass'n v. Price, 16 Fla. 204, 326
Muzzy v. Shattuck, 1 Denio 233, 319
Myers v. City of Jeffersonville, 145 Ind. 431, 741
v. Indianapolis &c. R. Co., 113 Ill. 386, 1637
v. Irwin, 2 S. & R. 368, 51, 84
v. People, 26 Ill. 173, 1411, 1412
v. School Trustees, 21 Ill. App. 223, 1490
v. United States, 1 McLean 493, 322
v. United States, 22 Ct. Cl. 80, 772
Mygatt v. City of Green Bay, 1 Biss. 292, 1001, 1016
v. Washburn, 15 N. Y. 316, 229
Myrick v. City of La Crosse, 17 Wis. 456, 1201

N

Naegely v. City of Saginaw, 101 Mich. 532, 525, 715
Naegle v. City of Centralia, 81 Ill. App. 334, 509
Nagel v. City of Buffalo, 102 N. Y. 108, 312, 1790
v. City of Buffalo, 34 Hun 1, 1625
Nagle v. Mullison, 34 Pa. St. 48, 1111
v. Wakey, 161 Ill. 387, 772, 1342
Nail &c. Iron Co. v. Furnace Co., 46 Ohio St. 544, 1573
Nalick Gas Light Co. v. Inhabitants &c., 175 Mass. 246, 1778
Nalle v. City of Austin, 23 Tex. Civ. App. 595, 1293
Nally v. Hartford Carpet Co., 51 Conn. 524, 1627
Nance v. Johnson, 84 Tex. 401, 655
Napa &c. R. Co. v. Board &c., 30 Cal. 435, 685
Napier v. City of Brooklyn, 58 N. Y. S. 506, 1770
Napman v. People, 19 Mich. 352, 467, 501, 539
Nash v. City of St. Paul, 8 Minn. 172, 235, 645
v. City of St. Paul, 11 Minn. 174, 644
v. Lowry, 37 Minn. 261, 565, 735
Nashville &c. R. Co. v. City of Attalla, 118 Ala. 362, 1383, 1710
Nason v. Directors of Poor, 126 Pa. St. 445, 319, 903, 1035
Natal v. Louisiana, 139 U. S. 621, 542, 580, 1402
National Bank v. City of Elmira, 53 N. Y. 49, 229, 242, 1724

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

National Bank v. City of St. Joseph, 31 Fed. 216, 646, 1027
v. Commonwealth, 9 Wall. 353, 1501
v. Kimball, 103 U. S. 732, 1708
v. Kirby, 108 Mass. 497, 1018
v. Matthews, 98 U. S. 621, 650
v. Sebastian Co., 5 Dill. 414, 766
v. Town of Grenada, 41 Fed. 87, 491, 988
v. Town of Grenada, 44 Fed. 262, 463, 483, 484
v. Yankton, 101 U. S. 129, 47
National Life Ins. Co. v. Board &c., 62 Fed. 778, 27 U. S. App. 244, 10 C. C. A. 637, 66, 69, 1005, 1029, 1757
v. Mead, 13 S. D. 37, 876, 998, 1007
National Lumber Co. v. City of Wymore, 30 Neb. 356, 941
National &c. R. Co. v. Central R. Co., 32 N. J. Eq. 755, 591
National State Bank v. Independent Dist. of Marshall, 39 Iowa 490, 891
National Tube-Works Co. v. City of Chamberlain, 5 Dak. 54, 648
National Water-works Co. v. Kansas City, 62 Fed. 853, 737
v. School District, 48 Fed. 523, 1452
Nations v. Johnson, 24 How. 195, 692
Naumann v. Board &c., 73 Mich. 252, 153
Nauroo v. Ritter, 97 U. S. 272, 1001
Nave v. Flack, 90 Ind. 205, 1331
Naylor v. City of Galesburg, 56 Ill. 285, 521
v. Field, 29 N. J. L. 287, 106
v. Sharpless, 2 Mod. 23, 295
Nazworthy v. City of Sullivan, 55 Ill. App. 48, 465
Neal v. Commissioners &c., 85 N. C. 420, 1043
v. Delaware, 103 U. S. 370, 140
v. Town of Marion, 126 N. C. 412, 1329, 1784
Neale v. County Court &c., 43 W. Va. 90, 610, 1017
Neales v. State, 10 Mo. 498, 1415
Neary v. Robinson, 98 N. Y. 81, 948
Nebraska City v. Campbell, 2 Black 590, 8, 813
v. Lampkin, 6 Neb. 27, 680
v. Northcutt, 45 Neb. 456, 1219
Needham v. School Dist., 62 Vt. 176, 1474
Neely v. Yorkville, 10 S. C. 141, 210, 646
Neenan v. Smith, 50 Mo. 525, 1262, 1268
Neff v. Covington Stone &c. Co., 21 Ky. L. 1454, 751, 1151, 1275
v. Inhabitants &c., 148 Mass. 487, 815, 1036, 1068
Neill v. Gates, 152 Mo. 585, 491, 518, 732
Neirer v. Missouri Pac. R. Co., 1 S. W. 386, 1356
Neitzel v. City of Concordia, 14 Kan. 446, 535
Neitzey v. Baltimore &c. R. Co., 5 Mackey 34, 1354
Nelden v. Clark, 20 Utah 382, 712
Nelson v. City of Laporte, 33 Ind. 258, 1232, 1543
v. City of Saginaw, 106 Mich. 659, 1281
v. Inhabitants &c., 7 Pick. 18, 357, 667, 668, 1534
v. Mayor &c., 63 N. Y. 535, 242, 894
v. Mayor &c., 5 N. Y. S. 688, 729
v. McArthur, 38 Mich. 204, 45
v. Pierce, 6 N. H. 194, 347
Nelson v. St. Martin's Parish, 111 U. S. 716, 521
v. United States, 22 Ct. Cl. 159, 772
v. Village of Canisteo, 100 N. Y. 89, 265
Nesbit v. Independent Dist. of Riverside, 144 U. S. 610, 890, 1024
v. Independent School Dist., 25 Fed. 635, 1028
v. Matthews, 16 N. Y. S. 202, 1413
v. Trumbo, 39 Ill. 110, 687
Nevada Bank v. Sedgwick, 104 U. S. 111, 1510
v. Steinmitz, 64 Cal. 301, 991
Nevil v. Clifford, 55 Wis. 161, 652
Nevin v. Roach, 86 Ky. 492, 478, 1252
Nevins v. City of Fitchburg, 174 Mass. 545, 1775
v. City of Peoria, 41 Ill. 502, 680, 1385
New Albany &c. R. Co. v. Connelly, 7 Ind. 32, 706
Newark Aqueduct Board v. City of Passaic, 46 N. J. Eq. 552, 1092
Newark City Bank v. Assessor, 30 N. J. L. 13, 1500, 1501
Newaygo Co. Mfg. Co. v. Echtinaw, 81 Mich. 416, 277, 287
New Bedford &c. R. Co. v. Achushnet &c. R. Co., 143 Mass. 200, 108
Newbery v. Fox, 37 Minn. 141, 233, 235, 250, 645
New Boston v. Dunbarton, 12 N. H. 409, 45
v. Dunbarton, 15 N. H. 201, 48, 49, 87
New Brighton Borough v. Peirsol, 107 Pa. St. 280, 1220, 1603
New Buffalo v. Iron Co., 105 U. S. 73, 995
Newby v. Free, 72 Iowa 379, 1496
Newcastle &c. R. Co. v. Peru &c. R. Co., 3 Ind. 464, 637
New Central Coal Co. v. George's Creek Coal Co., 37 Md. 537, 685
New Decatur v. Berry, 90 Ala. 432, 616
New England &c. Co. v. James, 77 Mo. App. 616, 1297
Newgass v. City of New Orleans, 42 La. An. 163, 636, 839, 974
New Haven v. Sargent, 38 Conn. 50, 1221
New Haven &c. Co. v. City of New Haven, 72 Conn. 288, 1773, 1781
New Haven &c. R. Co. v. Town of Chatham, 42 Conn. 465, 365, 1023, 1427, 1428
New Jersey v. Wilson, 7 Cranch 164, 771
v. Yord. 95 U. S. 104, 510, 1184
New Jersey &c. Co. v. Fire Com'rs, 34 N. J. Eq. 117, 233
New Jersey Car Spring &c. Co. v. City of Jersey City, 46 Atl. 649, 713, 715
Newlan v. President &c., 14 Ill. 364, 541
Newland v. Marsh, 19 Ill. 376, 517
Newling v. Francis, 3 T. R. 189, 185
Newman v. Ashe, 9 Baxt. 289, 1536
v. Board &c., 45 N. Y. 676, 1551
v. City of Chicago, 153 Ill. 469, 1146, 1266, 1300
v. City of Emporia, 32 Kan. 456, 259, 1254, 1256
v. Justices &c., 1 Heisk. 787, 1527
v. Justices, 5 Sneed 695, 1528
v. Metropolitan &c. R. Co., 118 N. Y. 618, 705
v. Sylvester, 42 Ind. 112, 217
v. United States, 21 Ct. Cl. 205, 773
v. Wait, 46 Vt. 689, 1510

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Newmeyer v. Missouri &c. R. Co., 52 Mo. 81, 618, 651
New Orleans v. Clark, 95 U. S. 644, 259, 405, 1522
v. Morris, 105 U. S. 600, 1530
v. New Orleans &c. Co., 142 U. S. 79, 90
v. Platt, 99 U. S. 676, 1026
v. Poutz, 14 La. An. 856, 992
v. Warner, 175 U. S. 120, 716, 873, 1245, 1752
New Orleans &c. Co. v. City of New Orleans, 30 La. An. 1371, 1725
v. City of New Orleans, 42 La. An. 188, 569, 1404, 1465
v. New Orleans, 164 U. S. 471, 1703, 1704, 1808
New Orleans Drainage Co. Cases, 11 La. An. 338, 1084
New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650, 566, 1183, 1184, 1347, 1808
New Orleans R. Co. v. Frederic, 46 Miss. 1, 693
New Orleans &c. R. Co. v. City of New Orleans, 26 La. An. 478, 629
v. Delamore, 114 U. S. 501, 510
v. Lagarde, 10 La. An. 150, 705
v. Moye, 39 Miss. 374, 704
v. Stratham, 42 Miss. 607, 1111
New Orleans Taxpayers' Assn. v. City of New Orleans, 33 La. An. 567, 651
New Orleans Water-Works Co. v. Rivers, 115 U. S. 674, 510, 1347, 1808, 1810
New Providence Tp. v. Halsey, 117 U. S. 336, 1000, 1018
Newsom v. Georgia R. Co., 62 Ga. 339, 1614
Newson v. City of Galveston, 76 Tex. 559, 1403
Newton v. Belger, 143 Mass. 598, 503
v. Carberry, 5 Cranch C. C. 632, 1813
v. City of Worcester, 174 Mass. 181, 1344
v. Commissioners, 100 U. S. 548, 81, 757
v. Ellis, 85 Eng. C. L. 123, 1599
v. Leal, 56 S. W. 209, 1644
v. Worcester, 174 Mass. 181, 1799
New York v. Furze, 3 Hill 612, 816
New York &c. Co. v. Brooklyn, 71 N. Y. 580, 781, 788
New York Health Department v. Van Cott, 51 N. Y. Super. 413, 193
New York Life Ins. Co. v. Staats, 21 Barb. 570, 295
v. White, 17 N. Y. 469, 228
New York &c. R. Co., Matter of, 66 N. Y. 407, 1573
New York &c. R. Co., Matter of, 77 N. Y. 248, 1557
v. Bristol, 151 U. S. 556, 710
v. City of New Britain, 49 Conn. 40, 1251
v. City of New Haven, 42 Conn. 279, 1250
v. City of Waterbury, 55 Conn. 19, 480
v. Forty-Second St. &c. R. Co., 50 Barb. 285, 1352
v. Marsh, 12 N. Y. 308, 1725
v. Marvin, 11 N. Y. 276, 1419
v. Mayor &c., 1 Hilt. 562, 829
v. Metropolitan Gas Co., 63 N. Y. 326, 4, 6
v. Van Horn, 57 N. Y. 473, 644, 1532
v. Village of New Rochelle, 60 N. Y. 904, 637, 732, 1151
v. Wheeler, 72 Conn. 481, 710
New York Security &c. Co. v. City of Tacoma, 21 Wash. 303, 956
Ney v. City of Troy, 3 N. Y. S. 679, 1607
v. Swinney, 36 Ind. 454, 695
Niagara &c. Bridge Co. v. Bachman, 66 N. Y. 261, 1559, 1564
Nichol v. Mayor &c., 9 Humph. 252, 88, 982
Nicholas v. People, 165 Ill. 502, 1261, 1276
Nicholasville W. Co. v. Board &c., 64 S. W. 1133, 734, 742, 751
Nichols, In re, 48 Fed. 164, 1399
v. Boston, 98 Mass. 39, 189, 191, 811
v. City of Bridgeport, 23 Conn. 189, 673, 692, 704, 1233, 1266, 1572
v. City of Duluth, 40 Minn. 389, 801
v. City of Minneapolis, 30 Minn. 545, 827
v. City of St. Paul, 44 Minn. 494, 1210
v. Incorporated Town of Laurens, 96 Iowa 388, 793
v. Inhabitants &c., 66 Maine 402, 1613
v. MacLean, 101 N. Y. 526, 198
v. Stevens, 123 Mo. 96, 586
v. United States, 7 Wall. 122, 1718
v. Walter, 37 Minn. 264, 557
Nicholson v. Commissioners &c., 121 N. C. 27, 1785
v. Philadelphia, 194 Pa. St. 460, 1804
Nicol v. City of St. Paul, 80 Minn. 415, 1367
Nicolay v. St. Clair Co., 3 Dill. 163, 1011, 1024
Nicoll v. New York &c. R. Co., 12 N. Y. 121, 759
Nightingale's Case, 11 Pick. 168, 1402
Niklaus v. Conkling, 118 Ind. 289, 1201
Niles v. Patch, 13 Gray 254, 360
Niles Water-Works Co. v. Mayor &c., 59 Mich. 311, 260, 847, 877, 880
Nims v. Mayor &c., 59 N. Y. 500, 1208
Nisbet v. City of Atlanta, 97 Ga. 650, 786
Nivan v. City of Rochester, 76 N. Y. 619, 1587, 1632
Niver v. Village of Bath on Hudson, 58 N. Y. S. 270, 1151, 1281
Nixon v. City of Biloxi, 76 Miss. 810, 275, 1711
v. City of Newport, 13 R. I. 454, 803, 807
v. State, 96 Ind. 211, 902
Noble v. City of Vincennes, 42 Ind. 125, 987
Noble School Furniture Co. v. Washington School Tp., 4 Ind. App. 270, 856, 857
Noel v. City of San Antonio, 11 Tex. Civ. App. 580, 712, 729, 743, 1758
Noel Young &c. Co. v. Mitchell Co., 21 Tex. Civ. App. 638, 1031
Nolan v. King, 97 N. Y. 565, 1633
v. Mayor, 4 Yerg. 163, 1104
Nolan Co. v. Simpson, 74 Tex. 218, 903
v. State, 83 Tex. 182, 576, 839, 892
Noll v. Dubuque &c. R. Co., 32 Iowa 66, 673
Nolton v. Dyersburg, 127 U. S. 160, 981
Noonan v. City of Albany, 79 N. Y. 470, 8, 265, 790, 811, 1217
v. City of Lawrence, 130 Mass. 161, 1366
v. City of Stillwater, 33 Minn. 198, 1165, 1589
v. People, 183 Ill. 52, 522, 1310

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Norcross v. Thoma, 51 Maine 503, 1108
Norfleet v. Cromwell, 70 N. C. 634, 689
Norfolk City v. Ellis, 26 Gratt. 224, 1269
Norfolk &c. R. Co. v. Ely, 95 N. C. 77, 707
Normand v. Board &c., 8 Neb. 18, 651
Norris v. City of Waco, 57 Tex. 635, 405, 1513, 1516, 1518
v. Eaton, 7 N. H. 284, 345
v. Mayor &c., 44 Md. 598, 700, 1196
v. Mayor &c., 1 Swan 164, 384, 406, 448, 1517
v. Stapa, Hob. 211, 85
Norristown v. Moyer, 67 Pa. St. 355, 1592
North v. Cleveland &c. R. Co., 10 Ohio St. 548, 1737
North Beach &c. R. Co.'s Appeal, 32 Cal. 499, 1248, 1509
North Carolina R. Co. v. Commissioners &c., 77 N. C. 4, 1550, 1725
North Chicago City R. Co. v. Town of Lake View, 105 Ill. 207, 1110, 1120, 1121, 1130
North Chicago St. R. Co. v. Dudgeon, 184 Ill. 477, 1813
North Lebanon v. Arnold, 47 Pa. St. 488, 142
North Menheim Tp. v. Arnold, 119 Pa. St. 380, 1613
North Missouri R. Co. v. Lackland, 25 Mo. 515, 700
v. Stephens, 36 Mo. 150, 1713, 1740
North Pac. Lumbering &c. Co. v. City of East Portland, 14 Or. 3, 1189
North Penn. R. Co. v. Adams, 54 Pa. St. 94, 1020
North River Electric &c. Co. v. City of New York, 62 N. Y. S. 726, 713, 714, 742, 747
North Springs Water Co. v. City of Tacoma, 21 Wash. 517, 1810, 1814
North Terrace Park, In re, 48 S. W. 860, 551, 1308
Northampton Co. v. Innes, 26 Pa. St. 156, 1073
Northern Bank &c. v. Porter Tp. Trustees, 110 U. S. 608, 256, 644, 646, 885 1001, 1003, 1008, 1009, 1024, 1757
Northern Indiana R. Co. v. Connelly, 10 Ohio St. 159, 1248
Northern Liberties v. St. John's Church, 13 Pa. St. 104, 593, 1247
v. Swain, 13 Pa. St. 113, 1234
Northern &c. R. Co. v. Mayor &c., 21 Md. 93, 282
Northfield v. Merrimack Co., 43 N. H. 165, 1042
Northrop v. Burrows, 10 Abb. Pr. 365, 1115
Northrup v. Town of Pittsfield, 2 N. Y. Super. Ct. 108, 870
Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, 1105, 1109, 1114, 1121
v. Village of Hyde Park, 70 Ill. 634, 1105
Northwestern &c. Ins. Co. v. Overholt, 4 Dill. 287, 1017
Northwestern Lumber Co. v. City of Aberdeen, 20 Wash. 102, 742
v. City of Aberdeen, 22 Wash. 404, 956
Northwestern Packet Co. v. St. Paul, 3 Dill. 454, 580
Northwestern &c. Packet Co. v. City of Louisiana, 4 Dill. 17, 580
Northwestern Tel. &c. Co. v. City of Minneapolis, 81 Minn. 140, 1390
Northwood v. Barrington, 9 N. H. 369, 368
Norton v. Board &c., 129 U. S. 479, 996
v. City of East St. Louis, 36 Ill. App. 171, 888
v. City of New Bedford, 166 Mass. 48, 796
v. City of St. Louis, 97 Mo. 537, 1590
v. Dyersburg, 127 U. S. 160, 562, 1523, 1531
v. Peck, 3 Wis. 714, 13, 705
v. Petrie, 59 Conn. 200, 1419
v. Shelby Co., 118 U. S. 425, 70, 195, 196, 289, 890, 977, 993
v. Walkill &c. R. Co., 63 Barb. 77, 1571
Norwich &c. Co. v. Norwich City Gas Co., 25 Conn. 19, 568, 618
Norwood v. Baker, 172 U. S. 269, 1230, 1271, 1285 1291, 1296, 1300, 1302, 1708, 1709
v. Gonzales Co., 79 Tex. 218, 1569
Nott's Case, 11 Maine 208, 1415
Nottage v. City of Portland, 35 Or. 539, 515, 1299, 1311, 1544, 1553
Nowell v. Wright, 3 Allen 166, 222
Noxon v. Hill, 2 Allen 215, 335
Noyes v. Inhabitants &c., 11 Cush. 338, 1726
v. Spaulding, 27 Vt. 420, 994
v. Stillman, 24 Conn. 15, 1095
v. Town of Mason City, 53 Iowa 303, 1224
Nuckolls Co. v. Peebler, 91 N. W. 289, 178
Nudd v. Hobbs, 17 N. H. 524, 1561
Nugent v. Supervisors, 19 Wall. 241, 994, 995, 996
v. Wrinn, 44 Conn. 273, 278
Nuneaton Local Board v. Sewage Co., L. R. 20 Eq. 127, 1125
Nunemacher v. City of Louisville, 98 Ky. 334, 730
Nurnberger v. Town of Barnwell, 42 S. C. 158, 1754

O

Oakes v. Hill, 10 Pick. 333, 129
v. Hill, 14 Pick. 442, 1423
Oakland v. Carpenter, 13 Cal. 540, 1539
Oakley v. City of Atlantic City, 63 N. J. L. 127, 482, 514, 747, 750, 1184
O'Brien, In re, 119 Mich. 540, 1162
v. City of New York, 32 N. Y. S. 34, 152
v. City of Philadelphia, 150 Pa. St. 589, 1220, 1603
v. City of St. Paul, 25 Minn. 331, 587, 676, 790, 1215
v. City of Worcester, 172 Mass. 348, 1377, 1773, 1776
v. Mayor &c., 55 N. Y. S. 50, 932
v. Mayor &c., 160 N. Y. 691, 932
v. Pennsylvania &c. R. Co., 119 Pa. St. 184, 678
v. Wheelock, 95 Fed. 883, 1029, 1030
Ocean Grove &c. Assn. v. Berthall, 63 N. J. L. 312, 593
O'Connor v. City of Memphis, 6 Lea 730, 92
v. Pittsburg, 18 Pa. St. 187, 824, 1220
v. Town of Waterbury, 69 Conn. 206, 638
Oconto City Water &c. Co. v. City of Oconto, 105 Wis. 76, 1507, 1554
O'Dea v. City of Winona, 41 Minn. 424, 1188
Odell v. City of Atlanta, 97 Ga. 670, 598

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Odlorne v. Rand, 59 N. H. 504, 229
O'Donnell v. Bailey, 24 Miss. 386, 1511, 1532
O'Donovan v. Wilkins, 4 So. 789, 1100
O'Dowd v. City of Boston, 149 Mass. 443, 205
O'Farrell v. Colby, 2 Minn. 180, 381
Ogden v. City of Philadelphia, 143 Pa. St. 430, 1220, 1603
v. Daviess Co., 102 U. S. 634, 625, 646, 982, 984
v. Raymond, 22 Conn. 379, 216
v. Town of Lake View, 121 Ill. 422, 1259, 1290
Ogden City v. McLaughlin, 5 Utah 387, 1404
Ogg v. City of Lansing, 35 Iowa 495, 225, 797, 798, 822, 1096, 1768
Ogle v. Mayor &c., 90 Md. 59, 1315
O'Hara v. City of Buffalo, 57 N. Y. S. 367, 1365, 1378
v. City of New York, 59 N. Y. S. 36, 181, 184
v. Town of Park River, 1 N. D. 279, 174, 175, 483
Ohio v. Treasurer &c., 22 Ohio St. 419, 1480
Ohio &c. R. Co. v. Lawrence Co., 27 Ill. 50, 1724
Ohio Valley Iron Works v. Town of Moundsville, 11 W. Va. 1, 624, 980
Ohlquest v. Farwell, 71 Iowa 231, 1713
Oil City v. McAboy, 74 Pa. St. 249, 1738
Oil City &c. Bridge Co. v. Jackson, 114 Pa. St. 321, 1596
O'Laughlin v. City of Dubuque, 42 Iowa 539, 1638
Olcott v. Supervisors, 16 Wall 678, 55, 983, 1026, 1524
Old Colony &c. R. Co. v. City of Fall River, 147 Mass. 455, 1287
Oldis v. Donmille, Show. P. C. 58, 1743
Oldknow v. Wainwright, 2 Burr. 1017, 157, 161, 473
O'Leary, Ex parte, 65 Miss. 80, 1120
v. City of Mankato, 21 Minn. 65 1627
v. Sloo, 7 La. An. 25, 1233
Oliphant v. Commissioners &c., 18 Kan. 386, 695, 696, 1569
Olive v. West Mount, 16 Rap. Jud. Que. C. S. 426, 1342
Olive Cemetery Co. v. City of Philadelphia, 93 Pa. St. 129, 1247
Oliver v. City of Denver, 13 Colo. App. 345, 1338, 1362
v. City of Omaha, 3 Dill. 368, 1515, 1516
v. City of Worcester, 102 Mass. 489, 459, 756, 803, 813, 814, 815 1068, 1112, 1113, 1371, 1594
v. Keightley, 24 Ind. 514, 651
v. Memphis &c. R. Co., 30 Ark. 128, 1720
v. Washington Mills, 11 Allen 268, 137, 1500, 1537
Olmstead v. Board, 24 Iowa 33, 652
v. Camp, 33 Conn. 532, 685
Olmsted v. Dennis, 77 N. Y. 378, 198, 199, 222, 289
Olp v. Leddick, 59 Hun 627, 856
Olson v. City of Worcester, 142 Mass. 536, 1614
v. Town of Luck, 103 Wis. 33, 1796
Omaha Nat'l Bank v. City of Omaha, 15 Neb. 333, 990
O'Maley v. Borough of Freeport, 96 Pa. St. 24, 500
O'Malia v. Wentworth, 65 Maine 129, 537
O'Malley v. Borough of Parsons, 191 Pa. St. 612, 1338, 1802, 1804
O'Mally v. McGinn, 53 Wis. 353, 1423
O'Mara v. Railroad Co., 20 La. An. 25, 1111
O'Marrow v. City of Port Huron, 47 Mich. 585, 310
O'Meara v. Green, 16 Mo. App. 118, 1199
v. Green, 25 Mo. App. 198, 1233
v. Mayor &c., 1 Daly 425, 1097
Oneida Bank v. Ontario Bank, 21 N. Y. 490, 239, 649
O'Neil v. Battle, 15 N. Y. S. 818, 1480
v. Board &c., 41 N. J. L. 161, 699
v. City of West Branch, 81 Mich. 544, 1596
v. Hanscom, 175 Mass. 313, 1794, 1801
v. People, 166 Ill. 561, 1144
v. Village of West Branch, 81 Mich. 1023, 1593
O'Neill v. City of New Orleans, 30 La. An. 220, 8, 265
v. Register, 75 Md. 425, 1433
Onions v. Covington &c. R. Co., 21 Ky. L. 820, 1554
Ontario v. Hill, 99 N. Y. 324, 1010
Ontario Bank v. Bunnell, 10 Wend. 186, 1511
Ontario &c. R. Co. v. Taylor, 6 Ont. Rep. Q. B. D. 338, 701
Opening of Beck Street, In re, 44 N. Y. S. 1087, 1754
Opening of Berks St., In re, 12 W. N. C. 10, 1251
Opening of E. 169th St., In re, 56 N. Y. S. 819, 1781
Opening of Whitlock Ave., In re, 64 N. Y. S. 717, 1294, 1311
O'Phinney v. Trustees &c., 42 Atl. 58, 120
Opinion of Judges, 58 Maine 591, 1542
Opinion of Justices, 6 Cush. 578, 384
Opinions of Court, 58 N. H. 623, 1524
Orange v. Whittingham, 58 N. J. L. 655, 1378
Orange &c. R. Co. v. City Council, 17 Gratt. 176, 1512, 1534, 1545
Orchard v. School Dist., 14 Neb. 378, 988
Oregon v. Jennings, 119 U. S. 74, 256, 1001, 1004, 1019
v. Pyle, 1 Or. 149, 183
Oregonian R. Co. v. Oregon &c. R. Co., 10 Saw. 464, 649
O'Reiley v. Kankakee Val. &c. Co., 32 Ind. 169, 687
O'Reilley v. City of Kingston, 114 N. Y. 439, 1197, 1198, 1258, 1268
O'Reilly v. City of Syracuse, 63 N. Y. S. 520, 1375
v. Kankakee Drain Co., 32 Ind. 169, 1084
v. Village of Sing Sing, 15 N. Y. St. 905, 1 N. Y. S. 582, 826, 1640
Orford v. Benton, 36 N. H. 395, 366
Orkney St., In re, 194 Pa. St. 425, 1246
Orleans v. Platt, 99 U. S. 676, 1004, 1008
Orleans &c. R. Co. v. Dunn, 51 Ala. 128, 982
Orleans Village v. Perry, 24 Neb. 831, 1638
Orman v. Cheworth, 6 Mad. 163, 1557
Oroville &c. R. Co. v. Supervisors &c., 37 Cal. 354, 1679
Orphan Asylum's Appeal, 111 Pa. St. 135, 1233, 1234
Orr v. Hodgson, 4 Wheat. 453, 132
v. Quimby, 54 N. H. 590, 705
Orser v. Hoag, 3 Hill 79, 132
Orton v. State, 12 Wis. 509, 181

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Osborn v. People, 103 Ill. 224, 1691
v. President &c., 9 Wheat. 738, 4, 46
v. Selectmen &c., 2 Allen 207, 1751
v. Village of Oakland, 49 Neb. 340, 66
Osborne v. Adams Co., 106 U. S. 181, 980, 981
v. Borough of Springlake, 64 N. J. L. 362, 1788
v. Detroit, 32 Fed. 36, 1592, 1617
v. Kerr, 12 Wend. 179, 215
v. Missouri Pac. R. Co., 147 U. S. 248, 1706
v. United States, 86 U. S. 577, 326
Osgood v. Blake, 21 N. H. 550, 346, 366
v. City of Boston, 165 Mass. 281, 711
Oshkosh City R. Co. v. Winnebago Co., 89 Wis. 435, 1251, 1303
Oshkosh Water-works Co. v. City of Oshkosh, 106 Wis. 83, 930, 931
Osterhoudt v. Rigney, 98 N. Y. 222, 212, 825, 1054
Ostrander v. City of Lansing, 111 Mich. 693, 1377
O'Sullivan v. City of New Orleans, 49 La. An. 616, 180
Oswald v. Gosnell, 21 Ky. L. 1660, 482
v. Mayor &c., 5 H. L. Cas. 856, 318
Oswego Falls Bridge Co. v. Fish, 1 Barb. Ch. 547, 568
Otis v. City of Chicago, 161 Ill. 199, 511, 512, 1145
v. De Boer, 116 Ind. 531, 1201
v. Stockton, 76 Maine 506, 992
v. Strafford, 10 N. H. 352, 1053
Otoe Co. v. Baldwin, 111 U. S. 1, 643, 992
Otsego Lake Tp. v. Kirsten, 72 Mich. 1, 965
Ottawa v. Carey, 108 U. S. 110, 559, 624, 643, 980, 982, 984
v. First Nat'l Bank, 103 U. S. 770, 1000
v. National Bank, 105 U. S. 342, 980, 1001, 1018
Ottawa Com'rs v. Nelson, 19 Kan. 234, 1520
Ottawa Gas Co. v. McCaleb, 81 Ill. 556, 1513
Ottawa Gas Light &c. Co. v. People, 138 Ill. 336, 840
v. Thompson, 39 Ill. 598, 1112
Ottendorfer v. Fortunato, 56 N. Y. Super. Ct. 495, 1187
Ottie v. Chicago &c. R. Co., 89 Wis. 127, 1802
Ottoman Cahvey Co. v. City of Philadelphia, 13 Am. & Eng. Corp. Cas. 524, 210
Ottumwa Brick &c. Co. v. Ainley, 109 Iowa 386, 1176, 1246, 1308
Ould v. City of Richmond, 23 Gratt. 464, 1507, 1520
Outagamie Co. v. Town of Greenville, 77 Wis. 165, 938, 942
Ouverson v. City of Grafton, 5 N. D. 281, 1330
Over v. City of Greenfield, 107 Ind. 231, 261
Overholt v. Vieths, 93 Mo. 422, 1790
Overing v. Foote, 65 N. Y. 263, 1238
v. Russell, 32 Barb. 263, 134
Overseers &c. v. Guardians &c., L. R. 16 Q. B. D. 723, 1043
v. McCoy, 2 P. & W. 432, 1043
v. Overseers &c., 19 N. J. L. 173, 1056
v. Overseers &c., 32 N. J. L. 66, 430
v. Overseer &c., 51 N. J. L. 93, 430, 431
Overseers v. Overseers &c., 3 Johns. 193, 430
v. Overseers &c., 15 Johns. 436, 193
v. Overseers, 18 Johns. 407, 192, 210, 647
v. Overseers &c., 15 N. Y. 341, 253
v. Overseers &c., 114 Pa. St. 394, 1043
v. Overseers &c., 118 Pa. St. 84, 1044
v. Overseers &c., 148 Pa. St. 333, 1048
v. Overseers &c., 148 Pa. St. 380, 1046
v. Overseers &c., 3 Penny. 107, 1046
v. Overseers &c., 18 W. N. C. 161, 1046
v. Overseers &c., 2 Vt. 151, 1058
v. Sears, 22 Pick. 122, 129
Ovitt v. Chase, 37 Vt. 196, 344, 362
Owen v. City of Ft. Dodge, 98 Iowa 281, 1335
v. Hill, 67 Mich. 43, 1484
Owens v. City of Lancaster, 182 Pa. St. 257, 1106
v. City of Milwaukee, 47 Wis. 461, 1726
v. O'Brien, 78 Va. 116, 813
v. State, 64 Tex. 500, 158
Owings v. Jones, 9 Md. 108, 1095
v. Speed, 5 Wheat. 420, 86, 87, 1422
Owners &c. v. Mayor &c., 15 Wend. 374, 688, 692
Owners of Lands v. People, 113 Ill. 296, 1084
Oxby v. Board of Supervisors &c., 124 Mich. 463, 1652
Oxford &c. Society v. West &c. Society, 55 N. H. 463, 564
Ozier v. Town of Hinesburg, 44 Vt. 220, 1598

P

Pace v. Ortiz, 72 Tex. 437, 1663
v. People, 50 Ill. 432, 200
Pacific Bridge Co. v. Clackamas Co., 45 Fed. 217, 834
Pacific Coast S. S. Co. v. Kimball, 114 Cal. 414, 609
Pacific Hotel Co. v. Lieb, 83 Ill. 602, 1513
Pacific Imp. Co. v. City of Clarksdale, 74 Fed. 528, 743
Pacific Pav. Co. v. Mowbray, 127 Cal. 1, 952
Pacific R. Co. v. Cass Co., 53 Mo. 17, 1513
Pacific Road Co. v. Renshaw, 18 Mo. 210, 994
Pack v. Mayor &c., 8 N. Y. 222, 1591
Packard v. Bergen Neck R. Co., 54 N. J. L. 229, 1156
v. Board, 2 Colo. 338, 652, 985, 990
v. Mendenhall, 42 Ind. 598, 1572
v. Railroad Co., 48 N. J. Eq. 281, 592
Packet Co. v. Keokuk, 95 U. S. 80, 579
v. St. Louis, 100 U. S. 423, 1537
v. Sorrels, 50 Ark. 466, 629
Packwood v. Kittitas Co., 15 Wash. 88, 1021
Paddleford v. Mayor &c., 14 Ga. 438, 1500, 1508
Padgett v. State, 93 Ind. 396, 1660
Paducah &c. Co. v. Stovall, 12 Heisk. 1, 704
Paducah Lumber Co. v. Paducah Water Supply Co., 89 Ky. 340, 1460
Page v. Allen, 58 Pa. St. 338, 370, 651
v. Chicago &c. R. Co., 70 Ill. 324, 1603

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Page v. Hardin, 8 B. Mon. 648, 200, 207, 369, 1666
v. Mayor &c., 34 Md. 558, 1704
v. O'Toole, 144 Mass. 303, 675
Painter v. Inhabitants &c., 43 N. J. Eq. 317, 1541
Palmer v. Burnham, 47 Pac. 599, 728
v. City of Danville, 154 Ill. 156, 1149, 1231, 1299, 1300
v. City of Danville, 166 Ill. 42, 1310
v. City of Helena, 19 Mont. 61, 876
v. City of Syracuse, 57 N. Y. S. 600, 1304
v. Dearing, 93 N. Y. 7, 1631, 1632
v. Doney, 2 Johns. 346, 1540
v. Fitts, 51 Ala. 489, 1538
v. Hayes, 112 Ind. 289, 1757
v. Highway Com'rs, 49 Mich. 45, 1572
v. Mayor &c., 2 Sandf. 318, 178
v. McMahon, 133 U. S. 660, 559
v. Stumph, 29 Ind. 329, 1224, 1268
v. Vandenbergh, 3 Wend. 193, 193, 1054
v. Way, 6 Colo. 106, 1198, 1230
Pana v. Bowler, 107 U. S. 529, 1002, 1004, 1020, 1026
Paola &c. R. Co. v. Commissioners, 16 Kan. 302, 275, 277, 280, 732
Pappenheim v. Metropolitan R. Co., 128 N. Y. 436, 1773
Papworth v. City of Fitzgerald, 106 Ga. 378, 513
v. City of Milwaukee, 64 Wis. 389, 1589
Paralee v. Camden, 49 Ark. 165, 1403
Parcher v. Marathon Co., 52 Wis. 388, 1551, 1552
Pardridge v. Village of Hyde Park, 131 Ill. 537, 521
Pareley v. Incorporated Town of Mechanicsville, 101 Iowa 266, 1784
Paret v. Bayonne, 39 N. J. L. 559, 662
Parfitt v. Ferguson, 38 N. Y. S. 466, 739
v. Furgeson, 159 N. Y. 111, 1349
Parham v. Justices, 9 Ga. 341, 685
Paris v. People, 27 Ill. 73, 213
Paris Mountain Water Co. v. City Council &c., 53 S. C. 82, 1778
Parish v. Golden, 35 N. Y. 462, 1255
v. Town of Eden, 62 Wis. 272, 1621
v. Wheeler, 22 N. Y. 494, 650
Parish School Board v. Packwood, 42 La. An. 468, 849, 1483
Park v. Board &c., 3 Ind. App. 536, 1076
v. City of Boston, 15 Pick. 198, 1571
v. Independent School Dist., 65 Iowa 209, 1496
v. Mayor &c., 8 Pick. 218, 1724
v. Modern Woodman, 181 Ill. 214, 734, 1752
Park Ave. Sewer, In re, 169 Pa. St. 433, 1244
Park Co. v. Jefferson Co., 12 Colo. 585, 1064
Parke v. City of Seattle, 5 Wash. 1, 1602
Parker v. Board &c., 54 Mich. 308, 1675
v. Board &c., 106 N. Y. 392, 852, 933, 964
v. Buckner, 67 Tex. 20, 1495
v. Challis, 9 Kan. 155, 1253, 1268
v. City of Atchison, 58 Kan. 29, 791
v. City of Boston, 175 Mass. 501, 1336, 1361
v. City of Springfield, 147 Mass. 391, 1631, 1634, 1636
v. City of St. Paul, 47 Minn. 317, 1559, 1573
v. City of Syracuse, 31 N. Y. 376, 1191
v. Commonwealth, 6 Pa. St. 507, 69
Parker v. Mayor &c., 39 Ga. 725, 1112, 1375
v. Smith, 3 Ill. App. 356, 990
v. Titcomb, 82 Maine 180, 345, 355, 357, 627, 1474
v. Zeisler, 139 Mo. 298, 13
v. Zeisler, 73 Mo. App. 537, 518
Parkersburg v. Brown, 106 U. S. 487, 653, 979, 980, 1535, 1536
Parkhill v. Town of Brighton, 61 Iowa 103, 1634, 1802
Parkhurst v. Capital City R. Co., 23 Or. 471, 1351
Parkinson v. Parker, 48 Iowa 667, 230
Parks v. City of Boston, 15 Pick. 198, 693
v. Greenville, 44 S. C. 168, 789
v. Mayor &c., 8 Pick. 218, 687, 1320
v. Newburyport, 10 Gray 28, 1216
Parmelee v. City of Chicago, 60 Ill. 267, 1248
Parnell v. Commissioners, 34 Ala. 278, 706
Parr v. President &c., 72 N. Y. 463, 262, 491, 638, 851
Parrett v. Shaubhut, 5 Minn. 323, 228
Parry v. Berry, 1 Comyns 269, 289, 296
Parsons, Ex parte, 1 Hughes 282, 1534
v. Brainard, 17 Wend. 522, 228
v. Inhabitants &c., 11 Pick. 396, 251, 257, 647, 867, 1542
v. Inhabitants &c., 70 Maine 262, 974
v. Jackson, 99 U. S. 434, 1012, 1027
v. McGavock, 2 Tenn. Ch. 581, 1745
v. Trustees, 44 Ga. 529, 491, 1425
Passage v. Board &c., 19 Mich. 330, 1485
Patoka Tp. v. Hopkins, 131 Ind. 142, 791
Patrick v. Robinson, 83 Ala. 575, 1742
Patten v. Green, 13 Cal. 325, 1238
Patterson v. Barlow, 60 Pa. St. 54, 370
v. Baumer, 43 Iowa 477, 689
v. Chicago &c. R. Co., 75 Ill. 588, 1706
v. City of Austin, 15 Tex. Civ. App. 201, 1326
v. City of Austin, 29 S. W. 1139, 1316, 1335
v. City of Macomb, 179 Ill. 163, 1134
v. Inhabitants &c., 38 N. J. L. 255, 322
v. Mayor &c., 83 Ga. 606, 1491
v. Miller, 2 Met. 493, 197, 198
v. Munyan, 93 Cal. 128, 1561
Patton v. Board &c., 96 Ind. 131, 1580
v. Caldwell, 1 Dall. 419, 1757
v. City of Philadelphia, 175 Pa. St. 88, 1219
v. City of Springfield, 99 Mass. 627, 1514
v. Stephens, 14 Bush 324, 669, 670
Patty v. Colgan, 97 Cal. 251, 926
Paul v. City of Detroit, 32 Mich. 108, 698
v. City of Kenosha, 22 Wis. 266, 237
v. City of New York, 61 N. Y. S. 570, 710, 1753
v. Pacific R. Co., 4 Dill. C. C. 35, 1720
Paulsen v. Portland, 149 U. S. 30, 1302
Paulson v. City of Portland, 16 Or. 450, 1205, 1253, 1288
Pause v. City of Atlanta, 98 Ga. 92, 1773, 1775
Paxson v. Sweet, 13 N. J. L. 196, 506, 1198
Payne v. Rittman, 66 Ark. 201, 209
v. Town of Dunham, 29 Ill. 125, 1042
v. Treadwell, 16 Cal. 220, 630, 1537

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Payne v. Village of South Springfield, 161 Ill. 285, 1147, 1173, 1249, 1296
Peabody v. Flint, 6 Allen 52, 296
v. Peabody, 6 Abb. Pr. 228, 196
Peacock, Ex parte, 25 Fla. 478, 1417
v. City of Dallas, 89 Tex. 438, 1341
Peake v. City of New Orleans, 38 Fed. 779, 954
v. City of Superior, 106 Wis. 403, 1341
Pearce, In re, 44 Ark. 509, 1724
v. City Council &c., 37 Ga. 597, 1500, 1508
v. Hawkins, 2 Swan 87, 198
v. Village of Hyde Park, 126 Ill. 287, 511, 1259
Peard v. City of Mt. Vernon, 158 N. Y. 681, 1343
v. City of Mt. Vernon, 31 N. Y. S. 395, 1344
Pearl St., Re, 111 Pa. St. 565, 1214
Pearson v. City of Chicago, 162 Ill. 383, 511, 1277
v. City of Duluth, 40 Minn. 438, 1190
v. Wilson, 57 Miss. 848, 187
Peavey v. Robbins, 3 Jones L. 339, 221
Peay v. City of Little Rock, 32 Ark. 31, 1271
Peck v. Board, 87 Ind. 221, 1095
v. Booth, 42 Conn. 271, 339
v. Burr, 10 N. Y. 294, 252
v. City of Rochester, 3 N. Y. S. 872, 472
v. Louisville &c. R. Co., 101 Ind. 366, 1490
v. Spencer, 26 Fla. 23, 858
v. Watros, 30 Ohio St. 590, 1723
Peckham v. Town of Lebanon, 39 Conn. 231, 1556
Peddicord v. Baltimore &c. R. Co., 52 Md. 242, 591
Pedrick v. Bailey, 12 Gray 161, 191, 500, 508, 551, 552, 1592
v. City of Ripon, 73 Wis. 622, 652
Peebles v. Commissioners, 82 N. C. 385, 381
Peers v. Board of Education, 72 Ill. 508, 864
Peete v. Morgan, 19 Wall. 581, 580, 1101, 1537
Pegram v. Commissioners &c., 64 N. C. 557, 1526, 1528
v. Commissioners &c., 65 N. C. 114, 280, 1681
Pelk v. Chicago &c. R. Co., 94 U. S. 164, 6, 574
Pell v. City of New York, 65 N. Y. S. 34, 1105, 1136
v. Ulmar, 21 Barb. 500, 295
Pelletier v. City of Ashton, 12 S. D. 366, 1806
Pells v. City of Paxton, 176 Ill. 318, 1235, 1292
v. People, 159 Ill. 580, 1297
v. Webquish, 129 Mass. 469, 136
Pelter v. Allen, 21 Ky. L. 1122, 1295
Pelton v. Ottawa Co. Supervisors, 52 Mich. 517, 396
v. Railroad Co., 22 Week. Law Bul. 67, 682
v. Supervisors &c., 10 Wis. 63, 959
Pelzer v. City of Binghamton, 95 Fed. 823, 1708
Pendleton v. Inhabitants &c., 80 Maine 598, 1336
v. Miller, 82 Va. 390, 1486
Pendleton Co. v. Amy, 13 Wall. 297, 1001, 1005, 1023
Peninsula Iron & Lumber Co. v. Crystal Falls Tp., 60 Mich. 510, 802, 1200
Pennell v. City of New York, 45 N. Y. S. 229, 752
Pennie v. Reis, 132 U. S. 464, 762, 1434
Pennington v. Baehr, 48 Cal. 556, 1014
v. Streight, 54 Ind. 376, 223
Pennock v. Hoover, 5 Rawle 291, 593, 1267
Pennoyer v. City of Saginaw, 8 Mich. 534, 1217
v. Neff, 95 U. S. 714, 694
Pennsylvania Co. v. City of Chicago, 181 Ill. 289, 566, 599
v. City of Chicago, 81 Fed. 317, 800
v. Frana, 13 Ill. App. 91, 516
v. Langendorf, 48 Ohio St. 316, 1631
v. Sinclair, 62 Ind. 301, 1639
Pennsylvania Hall, In re, 5 Pa. St. 204, 1394, 1414, 1522
Pennsylvania L. Rod Co. v. Board &c., 20 W. Va. 360, 1480
Pennsylvania Mutual L. Ins. Co. v. Heirs, 141 Ill. 35, 1706
Pennsylvania R. Co. v. Canal Com'rs, 21 Pa. St. 9, 585
v. City of Philadelphia, 47 Pa. St. 189, 982
v. Heister, 8 Barr 445, 697
v. Henderson, 51 Pa. St. 315, 1628
v. Lippincott, 116 Pa. St. 472, 1109
v. Marchant, 119 Pa. St. 541, 678
Pennsylvania Tp. v. Perry Co., 78 Pa. St. 457, 1575
Penny v. Penny, 37 L. J. Ch. 340, 701, 702
Penny Pot Landing, In re, 16 Pa. St. 79, 1214
Penobscot &c. Corp. v. Lamson, 16 Maine 224, 123
Penrice v. Wallis, 37 Miss. 172, 704
People v. Abbott, 107 N. Y. 225, 1483
v. Adams, 133 N. Y. 203, 1828
v. Adams, 9 Wend. 333, 1423
v. Adsit, 2 Hill 619, 830
v. Ah Ung, 28 Pac. 272, 1412, 1420
v. Albany Supervisors, 12 Johns. 415, 1531
v. Albertson, 55 N. Y. 50, 44, 150, 1430
v. Albertson, 8 How. Pr. 363, 195
v. Aldridge, 31 N. Y. S. 920, 1686
v. Allen, 42 N. Y. 378, 986
v. Allen, 52 N. Y. 538, 987, 1724
v. Andrews, 104 N. Y. 570, 191
v. Angle, 109 N. Y. 564, 1826, 1829
v. Anthony, 6 Hun 142, 171
v. Armstrong, 73 Mich. 288, 617
v. Assessors, 44 Barb. 148, 1650
v. Austin, 47 Cal. 353, 1232, 1542
v. Austin, 11 Colo. 134, 961
v. Bagley, 85 Cal. 343, 117, 406
v. Baltimore &c. R. Co., 117 N. Y. 150, 620
v. Bancroft, 2 Idaho 1077, 449
v. Bank, 24 Wend. 431, 217
v. Baraga Tp., 39 Mich. 554, 210
v. Barden, 30 N. Y. St. 52, 1649
v. Barnes, 114 N. Y. 317, 940, 1661
v. Barrett, 18 Hun 206, 988
v. Barrett, 8 N. Y. S. 677, 167
v. Bartels, 138 Ill. 322, 787
v. Bartlett, 6 Wend. 422, 288
v. Batchellor, 53 N. Y. 128, 43, 1531, 1538, 1542
v. Batchelor, 22 N. Y. 128, 273, 274, 275, 732
v. Bedell, 2 Hill 196, 168
v. Bell, 3 N. Y. S. 314, 1439, 1440, 1442
v. Bell, 4 N. Y. S. 869, 1441
v. Bell, 8 N. Y. S. 748, 1440, 1444
v. Benevolent Society, 24 How. Pr. 216, 206

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

People v. Benhouten, 35 N. Y. S. 186, 1758
v. Bennett, 29 Mich. 451, 11, 35, 36, 384, 393
v. Bennett, 54 Barb. 480, 1529
v. Betts, 55 N. Y. 600, 1724
v. Bingham, 82 Cal. 238, 380
v. Bird, 55 Hun 610, 153
v. Blair, 82 Ill. App. 570, 160, 165, 168, 192, 202
v. Blake, 19 Cal. 579, 698
v. Blake, 49 Barb. 6, 150
v. Blodgett, 13 Mich. 127, 377
v. Board &c., 11 Cal. 206, 763, 1522
v. Board &c., 21 Cal. 668, 92
v. Board &c., 26 Cal. 641, 436, 1522
v. Board &c., 27 Cal. 655, 261, 659
v. Board &c., 33 Cal. 487, 697
v. Board &c., 50 Ill. 213, 959, 1526
v. Board &c., 63 Ill. 374, 984
v. Board &c., 84 Ill. 303, 1683
v. Board &c., 92 Ill. 441, 985, 1524
v. Board &c., 101 Ill. 308, 1494
v. Board &c., 127 Ill. 613, 1644
v. Board &c., 26 Ill. App. 476, 1477
v. Board &c., 13 Mich. 233, 1665
v. Board &c., 18 Mich. 400, 1494
v. Board &c., 38 Mich. 421, 1655
v. Board &c., 41 Mich. 647, 420
v. Board &c., 42 Mich. 422, 1655
v. Board &c., 2 Abb. Pr. 177, 1649
v. Board &c., 33 Barb. 344, 554
v. Board &c., 4 Hill 20, 1650
v. Board &c., 7 Hill 171, 1056
v. Board &c., 3 How. Pr. 241, 1661
v. Board &c., 21 How. Pr. 322, 1661
v. Board &c., 4 Hun 94, 870
v. Board &c., 5 Hun 647, 869
v. Board &c., 9 Hun 222, 1443
v. Board &c., 11 Hun 403, 1443
v. Board &c., 20 Hun 333, 1443
v. Board &c., 25 Hun 131, 1661
v. Board &c., 33 Hun 305, 1661
v. Board &c., 34 Hun 266, 940
v. Board &c., 34 Hun 336, 1096
v. Board &c., 34 Hun 599, 944
v. Board &c., 46 Hun 354, 1056, 1069
v. Board &c., 49 Hun 32, 950
v. Board &c., 55 Hun 445, 1439
v. Board &c., 56 Hun 459, 938, 1653
v. Board &c., 58 Hun 595, 1089, 1123
v. Board &c., 39 N. Y. 81, 1512, 1723
v. Board &c., 48 N. Y. 390, 1499, 1501, 1724
v. Board &c., 51 N. Y. 401, 1529, 1580
v. Board &c., 51 N. Y. 442, 1661, 1724
v. Board &c., 64 N. Y. 600, 960
v. Board &c., 64 N. Y. 627, 1526, 1527
v. Board &c., 74 N. Y. 310, 777
v. Board &c., 75 N. Y. 316, 336
v. Board &c., 75 N. Y. 381, 174
v. Board &c., 77 N. Y. 153, 1443
v. Board &c., 93 N. Y. 397, 1579
v. Board &c., 98 N. Y. 332, 1437
v. Board &c., 111 N. Y. 505, 1546
v. Board &c., 114 N. Y. 245, 1439
v. Board &c., 121 N. Y. 345, 1056
v. Board &c., 122 N. Y. 652, 1056
v. Board &c., 126 N. Y. 528, 1472
v. Board &c., 131 N. Y. 468, 554
v. Board &c., 159 N. Y. 495, 1829
v. Board &c., 1 N. Y. S. 593, 362, 1485
v. Board &c., 1 N. Y. S. 743, 1486
v. Board &c., 4 N. Y. S. 102, 1492, 1496
v. Board &c., 5 N. Y. S. 392, 1676
People v. Board &c., 7 N. Y. S. 806, 1436
v. Board &c., 11 N. Y. S. 841, 1437
v. Board &c., 12 N. Y. S. 165, 1670
v. Board &c., 13 N. Y. S. 447, 1646
v. Board &c., 15 N. Y. S. 308, 1671
v. Board &c., 15 N. Y. S. 748, 1661
v. Board &c., 16 N. Y. S. 254, 1661
v. Board &c., 39 N. Y. S. 607, 203
v. Board &c., 45 N. Y. S. 46, 1830
v. Board &c., 59 N. Y. S. 476, 165
v. Board &c., 59 N. Y. S. 615, 1662
v. Board &c., 63 N. Y. S. 445, 1154, 1260
v. Board &c., 15 N. Y. St. 860, 1161
v. Board &c., 35 N. Y. St. 411, 1089, 1123
v. Board &c., 42 N. Y. St. 22, 1160, 1161
v. Board &c., 47 N. Y. St. 891, 1568
v. Board &c., 8 Week. Dig. 466, 1443
v. Bond, 10 Cal. 563, 1531
v. Boston &c. R. Co., 70 N. Y. 569, 591, 592
v. Brady, 59 N. Y. S. 322, 209
v. Brady, 62 N. Y. S. 603, 204, 208
v. Brady, 65 N. Y. S. 844, 1830
v. Brayton, 94 Ill. 341, 396
v. Breen, 53 N. Y. Super. Ct. 167, 163
v. Brenahm, 3 Cal. 477, 349, 368
v. Brennan, 39 Barb. 651, 1649
v. Brill, 120 Mich. 42, 525
v. Brookfield, 39 N. Y. S. 673, 1364
v. Brooklyn Council, 77 N. Y. 503, 185, 340
v. Brown, 11 Ill. 478, 374
v. Brown, 80 Mich. 615, 1412, 1415
v. Brown, 55 N. Y. 180, 1528
v. Brush, 31 N. Y. S. 586, 192
v. Buchanan, 1 Idaho 681, 538
v. Bull, 46 N. Y. 57, 150, 1432
v. Burkhart, 76 Cal. 606, 327
v. Burns, 5 Mich. 114, 420
v. Burr, 13 Cal. 343, 90, 103, 763
v. Bush, 40 Cal. 344, 223
v. Campbell, 72 N. Y. 496, 1674, 1676
v. Canaday, 73 N. C. 198, 129, 369, 370
v. Canty, 55 Ill. 33, 1531
v. Carpenter, 24 N. Y. 86, 296, 384, 416, 1689
v. Carrique, 2 Hill 93, 198
v. Carter, 119 N. Y. 557, 1264
v. Case, 19 N. Y. S. 625, 1663
v. Casegeanda, 37 N. Y. S. 768, 541
v. Cass Co., 77 Ill. 438, 985
v. Cassity, 2 Lans. 294, 1509
v. Central Pac. R. Co., 43 Cal. 398, 1520
v. Chapin, 103 N. Y. 635, 1649
v. Chapin, 104 N. Y. 96, 1647, 1649, 1661
v. Chicago Gas Trust Co., 130 Ill. 268, 659
v. Chicago Live Stock Exch., 170 Ill. 556, 734
v. Chicago &c. R. Co., 67 Ill. 118, 591
v. Chicago &c. R. Co., 96 Ill. 369, 1260
v. Chicago &c. R. Co., 118 Ill. 113, 468, 492
v. Chicago &c. R. Co., 18 Ill. App. 125, 522
v. Cicott, 16 Mich. 282, 155, 377, 378, 380
v. City of Brooklyn, 71 N. Y. 495, 1257
v. City of Brooklyn, 23 Barb. 166, 1234

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

People v. City of Buffalo, 147 N. Y. 675, 1246
v. City of Buffalo, 57 N. Y. S. 263, 1246
v. City of Buffalo, 57 N. Y. S. 1144, 1270
v. City of Buffalo, 65 N. Y. S. 163, 1307
v. City of Butte, 4 Mont. 174, 47, 58, 61, 83, 84
v. City of Chicago, 27 Ill. App. 217, 1683
v. City of Oakland, 92 Cal. 611, 402, 405, 1689
v. City of Oakland, 123 Cal. 145, 106
v. City of Peoria, 166 Ill. 517, 1806
v. City of Pontiac, 185 Ill. 437, 1287, 1685
v. City of Riverside, 70 Cal. 461, 44, 64
v. City of Rochester, 21 Barb. 656, 1257
v. City of Rochester, 44 Hun 166, 499
v. City of Syracuse, 63 N. Y. S. 878, 1136, 1142
v. Civil Service Boards, 17 Abb. N. C. 64, 784
v. Clark, 70 N. Y. 518, 1689, 1693
v. Clark, 53 Barb. 171, 987
v. Clark, 58 N. Y. S. 12, 1379, 1652
v. Claussen, 61 N. Y. S. 579, 1828
v. Clifford, 166 Ill. 165, 1260
v. Cline, 63 Ill. 394, 988, 1023
v. Clunie, 70 Cal. 504, 107, 108
v. Clute, 50 N. Y. 451, 373, 379
v. Coffee, 131 N. Y. 569, 1671
v. Coffey, 16 N. Y. S. 501, 1491
v. Coghill, 47 Cal. 361, 1540
v. Coleman, 4 Cal. 46, 137, 1503, 1508, 1521
v. Coler, 157 N. Y. 676, 1830
v. Coler, 159 N. Y. 569, 204, 1823
v. Coler, 54 N. Y. S. 639, 1662
v. Coler, 54 N. Y. S. 785, 748
v. Coler, 57 N. Y. S. 461, 743
v. Coler, 57 N. Y. S. 636, 1784
v. Coler, 65 N. Y. S. 44, 1241
v. Coler, 66 N. Y. S. 163, 1303
v. Collins, 3 Mich. 343, 520
v. Collins, 34 How. Pr. 336, 1472
v. Collins, 7 Johns. 549, 195
v. Collins, 19 Wend. 56, 280, 339, 1653
v. Commissioners, 52 Ill. 498, 1374
v. Commissioners, 4 Neb. 150, 1578
v. Commissioners, 23 N. Y. 224, 1499, 1500
v. Commissioners &c., 57 N. Y. 549, 1570
v. Commissioners &c., 58 N. Y. 242, 1502
v. Commissioners, 59 N. Y. 40, 1500
v. Commissioners &c., 82 N. Y. 459, 1509
v. Commissioners, 91 N. Y. 593, 1723
v. Commissioners, 95 N. Y. 554, 1544
v. Commissioners &c., 103 N. Y. 370, 1433
v. Commissioners &c., 106 N. Y. 64, 206
v. Commissioners, 3 Hill 599, 295
v. Common Council &c., 85 Cal. 369, 1645
v. Common Council &c., 51 Ill. 58, 1531
v. Common Council &c., 27 Mich. 131, 1523
v. Common Council &c., 28 Mich. 288, 14, 43, 90, 257, 755, 783, 1432, 1531, 1538
People v. Common Council &c., 33 Mich. 164, 1523
v. Common Council &c., 50 N. Y. 525, 684
v. Common Council &c., 77 N. Y. 503, 206, 311
v. Common Council &c., 78 N. Y. 33, 753, 1647, 1649
v. Common Council &c., 78 N. Y. 56, 699
v. Common Council &c., 90 Hun 488, 482
v. Common Council &c., 5 Lans. 11, 301
v. Common Council &c., 5 Lans. 142, 273
v. Common Council &c., 33 N. Y. S. 165, 204, 209
v. Common Council &c., 56 N. Y. S. 606, 1295
v. Common Council &c., 57 N. Y. S. 617, 1684, 1686, 1822, 1830
v. Common Council &c., 65 N. Y. S. 590, 1300
v. Comptroller &c., 77 N. Y. 45, 1191
v. Comptroller &c., 42 N. Y. S. 657, 610
v. Comptroller &c., 20 Wend. 595, 200
v. Conklin, 2 Hill 67, 134
v. Connor, 13 Mich. 238, 1695
v. Conover, 17 N. Y. 64, 169
v. Contracting Board, 27 N. Y. 378, 1646, 1649, 1668, 1673
v. Contracting Board, 33 N. Y. 382, 1669
v. Controller &c., 18 Mich. 445, 536
v. Cook, 180 Ill. 341, 1173, 1174
v. Cook, 8 N. Y. 67, 296, 373, 377
v. Cook, 14 Barb. 259, 152, 187, 377
v. Coon, 25 Cal. 635, 659, 982
v. Cornell, 35 How. Pr. 31, 1430
v. Corporation &c. of Albany, 11 Wend. 539, 821, 830
v. Cotteral, 119 Mich. 27, 754
v. Cowles, 13 N. Y. 350, 349, 368
v. Cox, 76 N. Y. 47, 535
v. Coyle, 64 N. Y. S. 894, 1768
v. Cram, 54 N. Y. S. 355, 1830
v. Cram, 61 N. Y. S. 858, 1823
v. Cram, 63 N. Y. S. 1027, 1830
v. Cram, 64 N. Y. S. 158, 1821
v. Cregier, 138 Ill. 401, 1400
v. Crimmins, 1 N. Y. S. 656, 1440
v. Crissey, 91 N. Y. 616, 313, 368, 376
v. Croton Aqueduct Board, 49 Barb. 259, 1669, 1674
v. Cummings, 65 N. Y. S. 581, 1247
v. Cunningham, 1 Denio 524, 1106, 1610
v. Curley, 5 Colo. 412, 1410
v. Daley, 37 Hun 461, 115, 1675
v. Dalton, 158 N. Y. 204, 1830
v. Dalton, 159 N. Y. 235, 1823
v. Dalton, 53 N. Y. S. 291, 201
v. Dalton, 53 N. Y. S. 1060, 208
v. Dalton, 54 N. Y. S. 216, 1820
v. Dalton, 60 N. Y. S. 909, 1823
v. Dalton, 63 N. Y. S. 258, 1824
v. Dalton, 65 N. Y. S. 426, 210
v. Davenport, 91 N. Y. 574, 1512, 1545
v. Davie, 114 Cal. 363, 201
v. Davis, 61 Barb. 456, 521
v. Dean, 3 Wend. 438, 187
v. Delaney, 49 N. Y. 655, 1725
v. Delaware &c. R. Co., 42 N. Y. 1011, 1146
v. Delaware &c. R. Co., 159 N. Y. 545, 512
v. De Mill, 15 Mich. 164, 1688

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

People v. Dennison, 82 N. Y. 272, 770
v. Dennison, 19 Hun 137, 894
v. Detroit White Lead Works, 82 Mich. 471, 1084
v. Deyon, 2 T. & C. 142, 987
v. Dickinson, 36 N. Y. S. 748, 1243
v. Dickson, 57 Hun 312, 1054
v. Diehl, 63 N. Y. S. 362, 1765
v. Diehl, 65 N. Y. S. 801, 1766
v. Doe, 36 Cal. 220, 1546, 1743
v. Dragstran, 100 Ill. 286, 1260
v. Drake, 60 N. Y. S. 309, 206
v. Draper, 15 N. Y. 532, 44, 94, 95, 103, 296, 1083, 1432, 1433, 1829
v. Draper, 25 Barb. 344, 763
v. Duane, 121 N. Y. 367, 206
v. Du Puyt, 71 Ill. 651, 624, 1538
v. Dutcher, 56 Ill. 144, 990
v. Dutchess &c. R. Co., 58 N. Y. 152, 592
v. Dwyer, 90 N. Y. 402, 825, 1371
v. Dykman, 60 N. Y. S. 290, 1822
v. Easton, 13 Abb. Pr. 159, 1494, 1649
v. East Saginaw, 40 Mich. 336, 1551
v. Edmunds, 15 Barb. 529, 960
v. Edwards, 9 Cal. 286, 309, 327
v. Eggers, 164 Ill. 515, 1260
v. English, 139 Ill. 622, 1486
v. Ennis, 79 N. Y. S. 946, 1432
v. Fairfield, 90 Cal. 186, 1426
v. Farnham, 35 Ill. 562, 50, 65
v. Faulkner, 107 N. Y. 477, 320, 911
v. Feitner, 156 N. Y. 694, 88, 194
v. Feitner, 52 N. Y. S. 197, 207
v. Feitner, 60 N. Y. S. 687, 1505, 1553
v. Feitner, 63 N. Y. S. 209, 184
v. Ferguson, 8 Cowen 102, 377, 378
v. Ferguson, 20 Week. Dig. 276, 313
v. Ferris, 76 N. Y. 326, 1657
v. Ferris, 16 Hun 219, 168
v. Fields, 58 N. Y. 491, 651
v. Fitzsimmons, 68 N. Y. 514, 1829
v. Flagg, 17 N. Y. 584, 715, 992
v. Flagg, 46 N. Y. 401, 1522, 1538, 1580
v. Fleming, 10 Colo. 553, 57, 58, 68
v. Flint, 39 Cal. 670, 627
v. Follett, 53 N. Y. S. 956, 1830
v. Fort St. &c. R. Co., 41 Mich. 413, 1159
v. Fredericks, 48 Barb. 173, 1723
v. Freeman, 80 Cal. 233, 150
v. Freese, 83 Cal. 453, 207
v. French, 91 N. Y. 265, 174
v. French, 108 N. Y. 105, 1435
v. French, 1 N. Y. S. 878, 1444
v. French, 4 N. Y. S. 222, 1441
v. French, 5 N. Y. S. 55, 1441, 1444
v. French, 6 N. Y. S. 213, 1438, 1444
v. French, 6 N. Y. S. 394, 1445
v. French, 7 N. Y. S. 442, 1444
v. French, 7 N. Y. S. 460, 1445
v. French, 8 N. Y. S. 456, 1438, 1439
v. French, 9 N. Y. S. 262, 1445
v. French, 13 N. Y. S. 337, 1441
v. French, 60 How. Pr. 377, 1443
v. French, 32 Hun 112, 1443
v. French, 46 Hun 232, 1435
v. French, 51 Hun 427, 1437, 1438
v. Frost, 32 Ill. App. 242, 276
v. Garabed, 45 N. Y. S. 827, 1105
v. Garey, 6 Cowen 642, 428
v. Garner, 47 Ill. 246, 374
v. Gartland, 75 Mich. 143, 1474, 1690
v. George, 2 Idaho 813, 417
v. Gibler, 78 Ill. App. 193, 1684
People v. Giegerich, 14 N. Y. S. 263, 173
v. Gillson, 109 N. Y. 389, 1382
v. Gilon, 126 N. Y. 147, 1248
v. Gilon, 24 Abb. N. C. 125, 1650
v. Gilroy, 15 N. Y. S. 242, 1828
v. Gleason, 8 N. Y. 728, 1653
v. Gleason, 121 N. Y. 631, 753
v. Goldtree, 44 Cal. 323, 627
v. Gooseman, 80 Mich. 611, 1412, 1415
v. Gordon, 81 Mich. 306, 1120
v. Grand River Bridge Co., 13 Colo. 11, 1693
v. Grant, 12 N. Y. S. 889, 1397
v. Gray, 53 N. Y. S. 274, 1769, 1830
v. Green, 158 Ill. 594, 1275, 1278, 1281, 1289
v. Green, 29 Mich. 121, 1655
v. Green, 56 N. Y. 466, 1790
v. Green, 64 N. Y. 606, 680
v. Green, 5 Daly 254, 199
v. Green, 11 Hun 56, 1676
v. Gregg, 13 N. Y. S. 114, 188
v. Guggenheimer, 59 N. Y. S. 913, 1644
v. Guggenheimer, 62 N. Y. S. 11, 1684
v. Gunn, 85 Cal. 238, 84
v. Hagar, 52 Cal. 171, 693, 1138
v. Hall, 80 N. Y. 117, 380, 1647, 1692, 1694
v. Hall, 104 N. Y. 170, 190
v. Hamill, 134 Ill. 666, 883, 996
v. Hamilton, 24 Ill. App. 609, 185
v. Hanifan, 96 Ill. 420, 185, 198
v. Hannan, 10 N. Y. S. 71, 1444
v. Hanrahan, 75 Mich. 611, 106, 495, 1085
v. Hanshaw, 60 Mich. 200, 155
v. Harper, 91 Ill. 357, 1084
v. Harrington, 63 Cal. 257, 295
v. Harrison, 185 Ill. 307, 525, 1406
v. Harshaw, 60 Mich. 200, 286, 297, 380
v. Hartwell, 12 Mich. 508, 349, 368, 1508, 1695
v. Hatch, 33 Ill. 9, 1680
v. Hawes, 36 Barb. 59, 960
v. Hawkins, 46 N. Y. 9, 870, 1674
v. Hawley, 3 Mich. 330, 673
v. Haws, 37 Barb. 440, 763, 1522
v. Hayden, 6 Hill 359, 705
v. Hayden, 16 N. Y. S. 98, 1445
v. Hayt, 66 N. Y. 606, 1669
v. Head, 25 Ill. 287, 1645
v. Henshaw, 76 Cal. 436, 1410
v. Henshaw, 61 Barb. 409, 987
v. Herkimer, 4 Cow. 345, 1734
v. Hertle, 60 N. Y. S. 23, 1684, 1823, 1824
v. Higgins, 3 Mich. 233, 152, 377
v. Hill, 7 Cal. 97, 446
v. Hoffman, 116 Ill. 587, 370, 371, 1825
v. Holden, 91 Ill. 446, 990
v. Hollhan, 29 Mich. 116, 387, 1690
v. Holley, 12 Wend. 481, 313
v. Holmes, 2 Wend. 281, 309
v. Hopson, 1 Denio 574, 197, 198, 289
v. Horton, 64 N. Y. 610, 1583
v. Howell, 13 N. Y. S. 217, 200
v. Howland, 155 N. Y. 270, 1829
v. Hughitt, 5 Lans. 89, 987
v. Hulett, 15 N. Y. S. 630, 1412
v. Hurford, 167 Ill. 226, 1144, 1146
v. Hurlbert, 46 N. Y. 110, 988
v. Hurlbut, 24 Mich. 44, 9, 44, 90, 764, 1432
v. Hutton, 18 Hun 116, 990
v. Hynds, 30 N. Y. 470, 1568
v. Imlay, 20 Barb. 68, 137

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

People v. Irwin, 21 Wend. 128, 134
v. Jackson, 8 Mich. 110, 1419
v. Jaehne, 103 N. Y. 182, 115
v. Jansen, 7 Johns. 332, 771
v. Johnson, 6 Cal. 499, 883
v. Johnson, 30 Cal. 98, 535
v. Johr, 22 Mich. 461, 309, 312
v. Jones, 112 N. Y. 597, 554
v. Jourdan, 15 Wkly. Dig. 278, 1443
v. Judge &c., 31 Mich. 456, 1672
v. Judge &c., 40 Mich. 64, 695, 1572
v. Judges &c., 23 Wend. 360, 1370
v. Justices, 74 N. Y. 406, 1413
v. Justices, 12 Hun 65, 537
v. Kane, 161 N. Y. 380, 218, 872, 1793
v. Kearney, 62 N. Y. S. 1097, 1823
v. Keir, 78 Mich. 98, 487, 603, 1402
v. Keller, 157 N. Y. 90, 1784
v. Keller, 158 N. Y. 187, 1784
v. Keller, 54 N. Y. S. 1011, 1820
v. Keller, 61 N. Y. S. 746, 171, 178
v. Kelly, 76 N. Y. 475, 922, 1576, 1578
v. Kelly, 5 Abb. N. C. 383, 486, 894
v. Kennedy, 37 Mich. 67, 377
v. Kenney, 96 N. Y. 294, 376
v. Kent, 160 Ill. 655, 752, 753
v. Kerr, 27 N. Y. 188, 1083, 1352, 1582
v. Kilduff, 15 Ill. 492, 158, 1645
v. Kilman, 69 N. Y. 32, 1580
v. King, 110 N. Y. 418, 1390
v. King, 42 N. Y. S. 961, 1828
v. Kingman, 24 N. Y. 559, 1556, 1561, 1570
v. Kingston &c. Road Co., 23 Wend. 193, 123
v. Kipley, 171 Ill. 44, 1644, 1817, 1824
v. Knauber, 60 N. Y. S. 298, 1822
v. Kniffin, 21 How. Pr. 42, 353
v. Knight, 13 Mich. 230, 1695
v. Knowles, 47 N. Y. 415, 988
v. Kopplekorn, 16 Mich. 342, 370
v. La Grange, 40 N. Y. S. 1026, 201, 1769
v. Laine, 33 Cal. 55, 370
v. Lane, 55 N. Y. 217, 1657
v. Langdon, 40 Mich. 673, 1688
v. Lansing, 55 Cal. 393, 1473
v. La Rue, 67 Cal. 526, 1689
v. Lawrence, 41 N. Y. 137, 1252
v. Lawrence, 54 Barb. 589, 708
v. Lawrence, 6 Hill 244, 668, 960
v. Leavitt, 41 Mich. 470, 544
v. Leavy, 59 N. Y. S. 408, 192
v. Leitner, 62 N. Y. S. 969, 1823
v. Leonard, 73 Cal. 230, 185
v. Lingle, 165 Ill. 65, 1278
v. Lippincott, 81 Ill. 193, 1021
v. Loehfelm, 102 N. Y. 1, 1559, 1562, 1583
v. Loeffler, 175 Ill. 585, 1824, 1825, 1826
v. Lohnas, 54 Hun 604, 1261
v. Londoner, 13 Colo. 303, 106, 114, 390, 1694
v. Lucas, 93 N. Y. 585, 328, 332
v. Lyman, 157 N. Y. 368, 1829
v. MacLean, 13 N. Y. S. 685, 1441, 1442
v. MacLean, 14 N. Y. S. 77, 1444
v. MacLean, 17 N. Y. S. 475, 1442
v. Mahaney, 13 Mich. 481, 183, 756, 1433
v. Maher, 56 Hun 81, 1255
v. Mallory, 46 How. Pr. 281, 620
v. Mangold, 71 Mich. 335, 1417
v. Manhattan R. Co., 20 Abb. N. C. 393, 1669
People v. Many, 35 N. Y. S. 78, 1286
v. Markley, 166 Ill. 48, 1144
v. Martin, 12 Cal. 409, 368
v. Martin, 60 Cal. 153, 1399
v. Martin, 5 N. Y. (1 Seld.) 22, 274, 352, 353, 354
v. Martin, 131 N. Y. 196, 1435, 1648
v. Martin, 8 N. Y. S. 516, 1438
v. Martin, 10 N. Y. S. 511, 1444
v. Maxon, 139 Ill. 306, 1349, 1422
v. May, 9 Colo. 404, 882, 887, 958
v. May, 27 Barb. 238, 708
v. Maynard, 14 Ill. 419, 1418
v. Maynard, 15 Mich. 463, 64, 65, 66, 69, 70, 420, 1730
v. Mayor &c. 51 Ill. 17, 43, 1531, 1538
v. Mayor &c., 130 Ill. 406, 1489
v. Mayor &c., 179 Ill. 615, 1685
v. Mayor &c., 2 Neb. 166, 1745
v. Mayor &c., 4 N. Y. (4 Comst.) 419, 673, 763, 1165, 1234, 1252, 1261, 1266, 1499, 1522
v. Mayor &c., 63 N. Y. 291, 294
v. Mayor &c., 144 N. Y. 63, 722, 1755
v. Mayor &c., 5 N. Y. S. 538, 206
v. Mayor &c., 45 N. Y. S. 900, 1687
v. Mayor, 18 Abb. N. C. 123, 620
v. Mayor &c., 5 Barb. 43, 169, 1724
v. Mayor &c., 9 Barb. 535, 1724
v. Mayor &c., 32 Barb. 102, 673
v. Mayor &c., 2 Hill 9, 554, 1419
v. Mayor &c., 7 How. Pr. 81, 85, 538
v. Mayor, 59 How. Pr. 277, 620, 1610
v. Mayor &c., 3 Johns. Ch. 79, 1657
v. Mayor &c., 25 Wend. 680, 753, 763
v. Mays, 17 Ill. App. 361, 1492
v. McAllister, 10 Utah 357, 209
v. McCarthy, 45 How. Pr. 97, 541
v. McCartney, 53 N. Y. S. 1047, 1830
v. McClave, 123 N. Y. 512, 1438, 1439
v. McClave, 8 N. Y. S. 515, 1445
v. McClave, 9 N. Y. S. 263, 1443
v. McClave, 10 N. Y. S. 441, 1442
v. McClave, 10 N. Y. S. 561, 1440, 1444
v. McClave, 13 N. Y. S. 340, 1439
v. McCreery, 34 Cal. 432, 1287, 1498, 1522
v. McFadden, 81 Cal. 489, 55, 61
v. McFall, 26 Ill. App. 319, 1477, 1494
v. McKinney, 52 N. Y. 374, 150, 1432
v. McLean, 8 N. Y. S. 511, 1441
v. McMurray, 27 Colo. 277, 1652
v. McRoberts, 62 Ill. 38, 1209, 1224
v. McWethy, 165 Ill. 222, 1282, 1296, 1308
v. McWethy, 177 Ill. 334, 719, 1259, 1308
v. Meach, 14 Abb. Pr. 429, 1173
v. Mead, 24 N. Y. 114, 1009
v. Meakim, 133 N. Y. 214, 816, 832
v. Meakim, 56 Hun 626, 1678
v. Mellen, 32 Ill. 181, 122
v. Merrick, 16 N. Y. S. 246, 169
v. Mersereau, 74 Mich. 687, 332
v. Metropolitan Police, 19 N. Y. 188, 1083
v. Metzker, 47 Cal. 524, 380
v. Meyers, 95 N. Y. 223, 598
v. Miller, 16 Mich. 205, 1695
v. Miller, 38 Hun 82, 1403
v. Mills, 32 Hun 459, 301, 303
v. Minck, 21 N. Y. 539, 1424

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

People v. Mitchell, 35 N. Y. 551, 982, 983
v. Molitor, 23 Mich. 341, 378, 1695
v. Molloy, 161 N. Y. 621, 1305
v. Molloy, 54 N. Y. S. 1084, 1684
v. Morgan, 55 N. Y. 587, 991
v. Morrell, 21 Wend. 563, 183, 415, 428
v. Morris, 13 Wend. 325, 4, 5, 9, 61, 81, 83, 90, 103, 453, 456
v. Mosher, 163 N. Y. 32, 1820, 1821, 1822
v. Mosher, 61 N. Y. S. 452, 1825, 1826
v. Moss, 56 N. Y. S. 1032, 201, 208, 1767
v. Moss, 63 N. Y. S. 912, 1765
v. Mount, 87 Ill. App. 194, 525, 1806
v. Murray, 57 Mich. 396, 540, 1422, 1423
v. Murray, 70 N. Y. 521, 1826
v. Murray, 73 N. Y. 535, 171, 454
v. Nearing, 27 N. Y. 306, 689
v. Newbrand, 60 N. Y. S. 588, 194
v. Newell, 13 Barb. 86, 295
v. Newton, 126 N. Y. 656, 1648
v. New York, 82 N. Y. 491, 200
v. New York Board &c., 52 N. Y. Super. 520, 1492
v. New York &c. R. Co., 74 N. Y. 302, 591
v. New York &c. R. Co., 84 N. Y. 565, 19
v. Nichols, 79 N. Y. 582, 200, 206
v. Niles, 35 Cal. 282, 1499
v. Nixon, 158 N. Y. 221, 152, 209, 1829
v. Nostrand, 46 N. Y. 375, 197, 198, 206, 289, 294
v. Nyland, 41 Cal. 129, 1412
v. O'Brien, 111 N. Y. 1, 75, 521, 595
v. Olmsted, 45 Barb. 644, 1650
v. O'Neil, 109 N. Y. 251, 115
v. Organ, 27 Ill. 26, 310
v. Osborn, 20 Wend. 186, 708
v. Osborne, 7 Colo. 605, 150
v. Otis, 90 N. Y. 48, 595
v. Oulton, 28 Cal. 44, 168, 213
v. Pacheco, 27 Cal. 175, 763
v. Page, 6 Utah 353, 59, 113, 115
v. Palmer, 52 N. Y. 84, 294
v. Palmer, 152 N. Y. 217, 1819
v. Parkes, 58 Cal. 624, 980
v. Pennock, 60 N. Y. 421, 319, 328
v. Perkins, 85 Cal. 509, 187, 313
v. Peters, 4 Neb. 254, 1485
v. Phillips, 1 Denio 388, 185
v. Phippin, 70 Mich. 6, 137
v. Phœnix Bank, 24 Wend. 431, 259
v. Pinckney, 32 N. Y. 377, 103, 1083
v. Police Justices, 7 Mich. 455, 1419
v. Pope, 53 Cal. 437, 1214
v. Porter, 6 Cal. 26, 199, 368
v. Potter, 63 Cal. 127, 187, 213, 1445
v. Power, 25 Ill. 187, 103, 762, 1084, 1522
v. Pratt, 129 N. Y. 68, 611
v. President &c., 64 Barb. 55, 1108
v. President &c., 32 Hun 508, 535
v. President &c., 29 N. Y. St. 723, 1649
v. President &c., 9 Wend. 351, 61, 83, 123, 404
v. President &c., 23 Wend. 254, 1578
v. Provines, 34 Cal. 520, 223
v. Quigg, 59 N. Y. 83, 106
v. Rathbone, 145 N. Y. 434, 1829
v. Raymond, 37 N. Y. 428, 150, 1083
v. Reardon, 49 Hun 425, 1649
v. Reat, 107 Ill. 581, 1260
People v. Reed, 81 Cal. 70, 1560, 1562
v. Regents &c., 4 Mich. 98, 339, 1655
v. Reid, 11 Colo. 138, 168
v. Reynolds, 10 Ill. 1, 61, 83
v. Riordan, 73 Mich. 508, 1689, 1690
v. Robb, 5 N. Y. S. 869, 1445
v. Robb, 8 N. Y. S. 418, 456, 1445
v. Robb, 9 N. Y. S. 831, 1438, 1442
v. Robb, 55 Hun 425, 1441
v. Roberts, 148 N. Y. 360, 1829
v. Roberts, 163 N. Y. 70, 1662
v. Roche, 124 Ill. 9, 1489, 1496
v. Romero, 18 Cal. 89, 1679
v. Roosevelt, 43 N. Y. S. 73, 1766
v. Roosevelt, 44 N. Y. S. 655, 1766
v. Roosevelt, 44 N. Y. S. 1003, 1806
v. Roosevelt, 48 N. Y. S. 578, 1823
v. Roosevelt, 57 N. Y. S. 11, 1765
v. Rosborough, 14 Cal. 180, 368
v. Runkle, 9 Johns. 147, 167, 288
v. Russell, 4 Wend. 570, 771
v. Ryan, 156 Ill. 620, 1277, 1278
v. Sacramento, 6 Cal. 422, 526
v. Saele, 52 Cal. 620, 1473
v. Salomon, 51 Ill. 37, 55, 61, 82, 83, 1084, 1546
v. Sanderson, 30 Cal. 160, 185
v. Sawyer, 106 Mich. 428, 505
v. Scannell, 65 N. Y. 832, 1768
v. Scannell, 54 N. E. 670, 1830
v. Scannell, 56 N. Y. S. 117, 194, 1828
v. Scannell, 59 N. Y. S. 480, 1822
v. Scannell, 59 N. Y. S. 950, 1684, 1821, 1823
v. Scannell, 62 N. Y. S. 682, 1684
v. Scannell, 62 N. Y. S. 930, 1768
v. Scannell, 62 N. Y. S. 1064, 171, 202
v. School Trustees, 78 Ill. 136, 1471
v. Schuyler, 4 N. Y. 173, 332
v. Schuyler, 5 Barb. 166, 331
v. Scrugham, 20 Barb. 302, 1657, 1691
v. Seaman, 5 Denio 409, 377
v. Shea, 64 N. Y. S. 426, 1823
v. Sheffield, 47 Hun 481, 1659
v. Shephard, 36 N. Y. 285, 798, 1432, 1433
v. Sherman, 83 Ill. 165, 1276
v. Simis, 45 N. Y. S. 940, 1828
v. Sisson, 98 Ill. 335, 362, 1473
v. Smith, 21 N. Y. 595, 684, 685, 692, 698
v. Smith, 45 N. Y. 772, 1009
v. Smyth, 28 Cal. 21, 213
v. Son, 19 N. Y. S. 309, 901
v. Soncy, 26 Ill. App. 505, 1663
v. Spencer, 55 N. Y. 1, 988
v. Squire, 107 N. Y. 593, 1390
v. State Treasurer, 23 Mich. 499, 756, 984
v. State Treasurer, 24 Mich. 468, 984, 1429
v. Staton, 73 N. C. 546, 171, 196
v. Stephens, 71 N. Y. 527, 729, 771
v. Stevens, 5 Hill 616, 171, 288
v. Stevens, 13 Wend. 341, 496
v. Stewart, 28 Cal. 395, 763
v. Stewart, 6 Ill. App. 62, 328
v. Stocking, 50 Barb. 573, 869, 1661
v. Stone, 78 Mich. 635, 373, 1486
v. Stott, 90 Mich. 343, 1415
v. Stout, 23 Barb. 338, 61, 69, 83
v. Stowell, 9 Abb. N. C. 456, 187, 280
v. Stupp, 49 Hun 544, 919
v. Suburban R. Co., 178 Ill. 594, 585, 1351, 1813
v. Summers, 30 N. Y. S. 614, 1649
v. Supervisors &c., 67 Ill. 57, 1756

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

People v. Supervisors, 88 Ill. 469, 986, 988
v. Supervisors &c., 100 Ill. 332, 1681
v. Supervisors &c., 3 Mich. 475, 1665
v. Supervisors &c., 14 Mich. 336, 860
v. Supervisors &c., 26 Mich. 22, 1238
v. Supervisors &c., 36 Mich. 377, 1652
v. Supervisors &c., 11 N. Y. 563, 1539, 1652, 1669
v. Supervisors &c., 20 N. Y. 252, 1252
v. Supervisors, 11 Abb. Pr. 114, 1522
v. Supervisors &c., 15 Barb. 607, 1668
v. Supervisors &c., 1 Hill 195, 1723
v. Supervisors, 1 Hill 362, 175, 178
v. Supervisors &c., 12 Johns. 414, 1668
v. Supervisors &c., 10 Wend. 363, 1529
v. Supervisors, 12 Wend. 257, 179
v. Sutphin, 66 N. Y. 49, 1712
v. Swift, 31 Cal. 26, 258, 259, 631, 714
v. Taylor, 57 Cal. 620, 313
v. Tazewell County, 22 Ill. 147, 1016
v. Ten Eyck, 13 Wend. 448, 323
v. Thompson, 99 N. Y. 641, 1676
v. Throop, 12 Wend. 183, 499
v. Thurber, 13 Ill. 554, 137
v. Tisdale, 1 Doug. 59, 377
v. Titner, 63 N. Y. S. 209, 1822
v. Toal, 85 Cal. 333, 196, 1410
v. Tompkins, 74 Ill. 482, 318
v. Town, 37 N. Y. S. 864, 712
v. Town Auditors, 75 N. Y. 316, 224
v. Town Board &c., 59 N. Y. S. 248, 1662
v. Town of Fairbury, 51 Ill. 149, 168
v. Town of Linden, 107 Cal. 94, 63
v. Town of Mt. Morris, 137 Ill. 576, 1651
v. Town of Oran, 121 Ill. 650, 442
v. Town of Waynesville, 88 Ill. 469, 991
v. Township Board &c., 20 Mich. 452, 983, 1536
v. Tracy, 54 N. Y. S. 1070, 208
v. Tracy, 1 Denio 617, 1681
v. Treasurer &c., 39 Mich. 554, 646
v. Tremain, 17 How Pr. 142, 1662
v. Trustees, 78 Ill. 136, 1538
v. Trustees &c., 54 Hun 16, 1649
v. Tweed, 63 N. Y. 202, 103
v. Utica Ins. Co., 15 Johns. 358, 296, 1511
v. Van Alstyne, 65 N. Y. S. 451, 1712
v. Van Cleve, 1 Mich. 362, 380
v. Vanderbilt, 28 N. Y. 396, 1115
v. Van Houten, 35 N. Y. S. 186, 541
v. Van Slyck, 4 Cowen 297, 381
v. Van Tassel, 19 N. Y. S. 643, 299
v. Van Wart, 25 Misc. 215, 88
v. Van Wyck, 159 N. Y. 509, 209, 1829
v. Van Wyck, 59 N. Y. S. 134, 152, 209, 1829
v. Vilas, 36 N. Y. 459, 178
v. Vilas, 3 Abb. Pr. 252, 308, 318
v. Village of Highland Park, 88 Mich. 653, 155
v. Village of Holly, 119 Mich. 637, 638
v. Village of Hyde Park, 117 Ill. 462, 700
v. Village of New Rochelle, 45 N. Y. S. 836, 1549
v. Village of Rochelle, 31 N. Y. S. 592, 1243
v. Wagner, 86 Mich. 594, 490
People v. Wagner, 7 Lans. 467, 987
v. Walker, 9 Mich. 328, 1430
v. Walker, 23 Barb. 304, 276
v. Walter, 68 N. Y. 403, 554
v. Warfield, 20 Ill. 160, 374, 1150
v. Waring, 62 N. Y. S. 579, 1828, 1830
v. Warner, 7 Hill 81, 183
v. Warren, 14 Ill. App. 296, 663
v. Wattles, 13 Mich. 446, 214
v. Wearing, 27 N. Y. 306, 1261
v. Weber, 86 Ill. 283, 197, 198, 1668
v. Weber, 89 Ill. 347, 170, 260
v. Welde, 59 N. Y. S. 474, 1820
v. Welde, 59 N. Y. S. 1030, 152
v. Weldon, 14 N. Y. S. 447, 1037
v. Weller, 11 Cal. 49, 368
v. Welles, 45 N. Y. S. 713, 1766
v. Wendell, 71 N. Y. 171, 960
v. Wendell, 57 Hun 362, 1649, 1682
v. West Bay Sugar Co., 83 N. W. 228, 1318
v. Whalen, 5 Weekly Dig. 410, 869
v. Whitcomb, 55 Ill. 172, 401
v. White, 24 Wend. 520, 70, 197, 289, 296
v. Whitman, 10 Cal. 38, 185
v. Wiant, 48 Ill. 263, 374, 1150
v. Williams, 51 Ill. 57, 687
v. Wilson, 15 Ill. 388, 1410
v. Wilson, 62 N. Y. 186, 370
v. Wilson, 119 N. Y. 515, 1650
v. Wilson, 62 Hun 618, 1421
v. Wilson, 3 N. Y. S. 326, 1258
v. Wilson, 16 N. Y. S. 583, 584
v. Wong Wang, 92 Cal. 277, 1411, 1412, 1420
v. Woods, 7 Cal. 579, 1531
v. Woods, 57 N. Y. S. 715, 1711
v. Wren, 5 Ill. 269, 61, 83, 447, 1084
v. Wright, 34 Mich. 371, 1483
v. Wurster, 35 N. Y. S. 89, 1828
v. Yancey, 167 Ill. 255, 1310
v. Yeazel, 84 Ill. 539, 1483
v. York, 53 N. Y. S. 947, 208, 1684
v. York, 59 N. Y. S. 418, 1687, 1712
v. York, 60 N. Y. S. 208, 1766
v. York, 64 N. Y. S. 2, 1766
v. York, 65 N. Y. S. 696, 1766
v. York, 65 N. Y. S. 1074, 1768
People's Nat'l Bank v. Ayer, 24 Ind. App. 212, 1033
v. City of Ennis, 50 S. W. 632, 1548, 1554
People's R. Co. v. Memphis R. Co., 10 Wall. 38, 637, 1323
Peoria &c. R. Co. v. People, 116 Ill. 401, 1533
v. Peoria &c. R. Co., 66 Ill. 174, 1323
v. Schertz, 84 Ill. 135, 1706
Pepper v. Smith, 15 Lea 551, 406, 407
Peppin v. Cooper, 2 B. & Ald. 431, 326
Perdue v. Ellis, 18 Ga. 586, 467
Pereles v. City of Watertown, 6 Biss. 79, 765
Pereria v. Wallace, 129 Cal. 397, 1791, 1809
Perin v. Carey, 24 How. 465, 564, 664
Perine v. Lewis, 128 Cal. 236, 1237, 1245, 1276, 1290, 1790
v. Moran, 127 Cal. 18, 1259
Perine &c. Co. v. City of Pasadena, 116 Cal. 6, 510, 754
Perkin v. Proctor, 2 Wils. 382, 220
Perkins v. Board &c., 56 Iowa 476, 1481
v. City of Burlington, 77 Iowa 553, 1514, 1518
v. City of Lawrence, 136 Mass. 305, 824
v. City of New Haven, 53 Conn. 214, 798

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Perkins v. City of Watertown, 5 Biss. 320, 1737
v. Corbin, 45 Ala. 103, 1410
v. Crocker, 109 Mass. 128, 1485
v. Inhabitants, 68 Maine 152, 1587, 1597
v. Ledbetter, 68 Miss. 327, 1401
v. Sanders, 56 Miss. 733, 1813
v. Slack, 86 Pa. St. 270, 894
v. Weston, 3 Cush. 549, 1429
Perkinson v. St. Louis, 4 Mo. App. 322, 210
Perley v. Inhabitants &c., 7 Gray 464, 1726
v. Muskegon Co., 32 Mich. 132, 319
Perrin v. Lyman, 32 Ind. 16, 216
Perrine v. Farr, 22 N. J. L. 356, 687
Perry v. Brown, 21 Ky. L. 344, 1788
v. City Council &c., 7 Utah 143, 1401
v. City of Rockdale, 62 Tex. 451, 1531
v. Cheboygan, 55 Mich. 250, 178
v. Cumberson, 39 Hun 436, 1564
v. Inhabitants &c., 12 Pick. 206, 348, 1485
v. Keene, 56 N. H. 514, 979, 983
v. Kinnean, 42 Ill. 160, 1701
v. People, 155 Ill. 307, 1304
v. State, 9 Wis. 19, 424
v. Torrence, 8 Ohio 521, 1502
v. Town of Putney, 52 Vt. 533, 829
v. Tynen, 22 Barb. 137, 294, 295
v. Washburn, 20 Cal. 318, 458
Perry Co. v. City of Du Quoin, 99 Ill. 479, 1041
v. Conway Co., 52 Ark. 430, 934
Perryman v. Bethune, 89 Mo. 158, 1486
v. City of Greenville, 51 Ala. 507, 85, 86
Peru &c. R. Co. v. Hana, 68 Ind. 562, 1249, 1251
Peruvian &c. R. Co. v. Thames &c. Ins. Co., L. R. 2 Ch. 617, 971
Pesterfield v. Vickers, 3 Coldw. 205, 97, 468, 1075
Peterborough v. Lancaster, 14 N. H. 382, 348, 367
Peters v. Bell, 51 La. An. 1621, 209, 1820
v. City of Lynchburg, 76 Va. 927, 1520
v. Litchfield, 34 Conn. 264, 1060
v. Town of Fergus Falls, 35 Minn. 549, 1126
Petersburg v. Applegarth, 28 Gratt. 321, 8
Petersilea v. Stone, 119 Mass. 465, 195, 196
Peterson v. Mayor &c., 17 N. Y. 449, 210, 240, 252, 260, 644, 894
Petrie v. Doe, 30 Miss. 698, 294
Pettibone v. Beardslee, 1 Luzerne Leg. Reg. 180, 1745
Pettigrew v. Bell, 34 S. C. 104, 1486
v. Village of Evansville, 25 Wis. 223, 1177, 1218
Pettingill v. Town of Olean, 48 N. Y. St. 96, 1604
Pettis v. Johnson, 56 Ind. 139, 585, 1322, 1757
Pettit v. Duke, 10 Utah 311, 1298
Petty v. Looker, 21 N. Y. 267, 185
v. Myers, 49 Ind. 1, 983
Peyser v. Mayor &c., 70 N. Y. 497, 244, 1205, 1263, 1265, 1551
Pfefferle v. Board &c., 39 Kan. 432, 1076
Pfefferling v. Mayor &c., 88 Md. 475, 513
Pfeiffer v. People, 170 Ill. 347, 1272
Phelan v. City of New York, 14 N. Y. S. 785, 176
v. Mayor &c., 119 N. Y. 86, 1189
Phelon v. Granville, 140 Mass. 386, 176
Phelps v. City of Detroit, 120 Mich. 447, 1172, 1781
v. City of Mankato, 23 Minn. 276, 1596, 1627
v. City of Mattoon, 177 Ill. 169, 1274, 1278
v. City of Tacoma, 15 Wash. 367, 1553
v. Lewiston, 15 Blatchf. 131, 1001
v. Lodge, 60 Kan. 122, 1685
v. Mayor &c., 112 N. Y. 216, 242, 244, 246, 282, 509, 1186, 1263, 1264, 1552
Philadelphia's Appeal, 86 Pa. St. 179, 1192
v. Bowman, 166 Pa. St. 393, 1282
v. Commonwealth, 52 Pa. St. 451, 14
v. Eddlemar, 169 Pa. St. 452, 1309
v. Fox, 64 Pa. St. 169, 10, 74, 90, 103, 422, 459, 563, 756
v. Lockhardt, 73 Pa. St. 211, 1192
v. Philadelphia &c. R. Co., 33 Pa. St. 41, 1250, 1251
v. Philadelphia &c. R. Co., 52 Pa. St. 177, 1503
v. Providence Trust Co., 132 Pa. St. 224, 1116
v. Scott, 81 Pa. St. 80, 673
v. Smith (Pa.), 16 Atl. 493, 1588
v. Stewart, 195 Pa. St. 309, 617, 1738
v. Verner, 8 Pa. Co. Ct. 79, 1234
Philadelphia Ass'n &c. v. Wood, 39 Pa. St. 73, 549
Philadelphia Ball Club v. City of Philadelphia, 192 Pa. St. 632, 1772, 1779
Philadelphia City v. Dungan, 124 Pa. St. 52, 1124
v. Field, 58 Pa. St. 320, 1252
Philadelphia &c. Iron Co. v. City of Chicago, 16 Ky. L. 455, 1286
Philadelphia &c. R. Co. v. Howard, 13 How. 307, 1748
v. Mayor &c., 38 Fed. 159, 788
v. Williams, 54 Pa. St. 103, 693
Philips v. City of Stevens Point, 25 Wis. 594, 1724, 1726
Phillips v. Allen, 41 Pa. St. 481, 532
v. Ash, 63 Ala. 414, 556
v. Board &c., 5 Kan. 412, 1725
v. City of Boston, 150 Mass. 491, 184
v. City of Olympia, 21 Wash. 153, 1286
v. City of Tecumseh, 5 Neb. 312, 1400
v. Commonwealth, 44 Pa. St. 197, 213, 1112
v. Foxhall, L. R. 7 Q. B. 666, 321
v. Harrow, 93 Iowa 92, 563
v. Mayor &c., 1 Hilt. 483, 183
v. Reed, 107 Iowa 331, 878, 881, 956
v. Ritchie Co., 31 W. Va. 477, 1633
v. School Dist., 79 Mich. 170, 849, 1496
v. Town of Albany, 28 Wis. 340, 345, 623, 983
v. Wickham, 1 Paige Ch. 590, 447
Phillips Co. v. Lee Co., 34 Ark. 240, 441
Phinizy v. City Council &c., 47 Ga. 260, 1112
Phœnix, In re, 65 N. Y. S. 719, 1309
Piatt v. People, 29 Ill. 54, 152
Piatt Co. v. Goodell, 97 Ill. 84, 443
Pickard v. Collins, 23 Barb. 444, 1387
Pickens Tp. v. Post, 99 Fed. 659, 1010, 1032
Pickering v. De Rochemont, 66 N. H. 377, 341, 343, 1485
v. Pickering, 11 N. H. 141, 365

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Pickering v. Shotwell, 10 Barr 23, 563
v. State, 106 Ind. 228, 1201
Pickett v. Adams, 12 Ky. L. 957, 1472
v. Harrod, 86 Ky. 485, 1472
v. Hastings, 47 Cal. 269, 629
v. School Dist., 25 Wis. 551, 291
Pickford v. Mayor &c., 98 Mass. 491, 706
Pickles v. Dry Dock Co., 38 La. An. 412, 572
Pickard v. Smith, 10 C. B. 470, 1779
Pidgeon v. McCarthy, 82 Ind. 321, 49
Pierce v. Benjamin, 14 Pick. 356, 1727
v. City of Aurora, 81 Ill. App. 670, 503
v. City of New Bedford, 129 Mass. 534, 263
v. Dart, 7 Cow. 609, 1112
v. Drew, 136 Mass. 75, 681
v. Emery, 32 N. H. 484, 1689
v. Mayor &c., 2 Marv. 306, 1328, 1359, 1374
v. Richardson, 37 N. H. 306, 1427
v. Whitcomb, 48 Vt. 127, 810
Pierce Mfg. Co. v. Bleckwenn, 12 N. Y. S. 768, 922
Piercy v. Averill, 37 Hun 360, 222, 224
Pieri v. Mayor &c., 42 Miss. 1493, 1093
Pierie v. Philadelphia, 139 Pa. St. 573, 178
Pierson v. City of Chicago, 162 Ill. 383, 1144
v. Glean, 14 N. J. L. 36, 1095
Pike v. City of Chicago, 155 Ill. 656, 1299
v. Megoun, 44 Mo. 491, 221
Pike Co. v. Hosford, 11 Ill. 170, 931, 1780
Pillsbury v. Brown, 47 Cal. 477, 1420
v. Mayor &c., 79 Maine 71, 1320
v. Moore, 44 Maine 154, 1095
Pimental v. City of San Francisco, 21 Cal. 351, 241, 291, 292, 631, 653
Pine Bluff W. & L. Co. v. City of Pine Bluff, 62 Ark. 196, 1712
v. Sewer Dist. &c., 56 Ark. 205, 1175
Pine City v. Munch, 42 Minn. 342, 1126
Pine Civil Tp. v. Huber Mfg. Co., 83 Ind. 121, 210, 647, 857, 862
Pine Co. v. Willard, 39 Minn. 125, 321
Pine Grove Tp. v. Tallcott, 19 Wall. 666, 983
Pinkerton v. Bailey, 8 Wend. 600, 1488
Pinkham v. Inhabitants &c., 104 Mass. 78, 1586, 1606
Pinney v. Brown, 60 Conn. 164, 282, 283, 349, 363
Piollet v. Simmers, 106 Pa. St. 95, 1613, 1614
Piper v. Chappell, 14 M. & W. 624, 100, 507
v. City of Spokane, 22 Wash. 147, 929, 930, 1334, 1797, 1798
v. Pearson, 2 Gray 120, 335
v. Singer, 4 Serg. & R. 354, 1546
Pipher v. People, 183 Ill. 436, 1274
Piqua Branch &c. v. Knoop, 16 How. 369, 90, 103
Piscataway Tp., In re, 24 Atl. 759, 1569
Pitman v. City of El Reno, 2 Okl. 414, 1331
Pittelkow v. City of Milwaukee, 94 Wis. 651, 1774
Pittman v. City of El Reno, 4 Okl. 638, 1326
Pitts v. City of Vicksburg, 72 Miss. 181, 598
v. District of Opelika, 79 Ala. 527, 482
Pittsburg v. Clarksville, 58 N. H. 291, 1580
v. Cluley, 74 Pa. St. 262, 1425
Pittsburg v. Danforth, 56 N. H. 272, 342, 362, 363
v. Grier, 22 Pa. St. 54, 811, 817
v. Murphy, 95 Fed. 57, 1311
Pittsburgh &c. R. Co. v. Bennett, 9 Ind. App. 92, 466
v. Board &c., 172 U. S. 32, 1697
v. City of Chicago, 159 Ill. 369, 1349
v. Gilleland, 56 Pa. St. 445, 1108
v. Hays, 17 Ind. App. 261, 1131, 1249, 1250, 1251, 1309
v. Hood, 94 Fed. 618, 511, 515
v. Rose, 74 Pa. St. 362, 701
v. Swinney, 97 Ind. 586, 699, 700
v. Town of Crown Point, 146 Ind. 421, 502
Pittsburg R. Co. v. Taylor, 104 Pa. St. 306, 1633
Pitzman v. Village of Freeburg, 92 Ill. 111, 982
Pixley v. Clark, 35 N. Y. 520, 824
Place v. City of Providence, 12 R. I. 1, 651
v. City of Yonkers, 60 N. Y. S. 171, 929
v. Taylor, 22 Ohio St. 317, 334
Placer Co. v. Campbell (Cal.), 11 Pac. 602, 938
Plano Mfg. Co. v. Rasey, 69 Wis. 246, 942
Planters' Oil Mill v. Monroe Water-Works &c. Co., 52 La. An. 1243, 786
Plaquemines Police Jury v. Mitchell, 37 La. An. 44, 1544
Platenius v. State, 17 Ark. 518, 770
Platt v. Chicago &c. R. Co., 31 N. W. 883, 1319
v. City of Waterbury, 72 Conn. 531, 250, 1805
Platte Co. v. Gerrard, 12 Neb. 244, 664
Platter v. Board &c., 103 Ind. 360, 210, 644, 647, 1038, 1190, 1660
Pleuler v. State, 11 Neb. 547, 1508
Plimpton v. Town of Summerset, 33 Vt. 283, 1414
Plumer v. Board &c., 46 Wis. 163, 1550
v. Harper, 3 N. H. 88, 1095
Plummer v. City of Milan, 79 Mo. App. 439, 1796, 1801
v. Sheldon, 94 Cal. 533, 1561, 1574
Plymouth Tp. v. Graver, 125 Pa. St. 24, 816
Pocontico Water-Works Co. v. Bids, 4 N. Y. S. 317, 1456
Poe v. Machine Works, 24 W. Va. 517, 543
Poillon v. City of Brooklyn, 101 N. Y. 132, 666
Poindexter v. Greenhow, 114 U. S. 270, 18
Point Pleasant Bridge Co. v. Town of Point Pleasant, 32 W. Va. 328, 62
Point Pleasant Land Co. v. Trustees &c., 47 N. J. L. 235, 374, 846, 1486
Police Com'rs v. City of Louisville, 3 Bush 597, 1433
Police Jury v. Britton, 15 Wall. 566, 562, 635, 637, 863, 971, 972, 973
v. Mayor &c., 38 La. An. 630, 12
v. McCormack, 32 La. An. 624, 629
v. McDonough, 8 La. An. 341, 983
v. Michel, 4 La. An. 84, 1743
v. Shreveport, 5 La. An. 661, 104
Polinsky v. People, 11 Hun 390, 496
Polk v. Cosgrove, 4 Biss. 437, 228
v. Plummer, 2 Humph. 500, 311
Pollard v. Hagan, 3 How. 212, 673
Pollock v. Lawrence Co., 2 Pittsb. 137, 951
v. Louisville, 13 Bush 221, 1075, 1097

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Polly v. Saratoga &c. R. Co., 9 Barb. 449, 692
Pomeroy v. Inhabitants &c., 154 Mass. 462, 1601, 1602, 1638
Pomeroy Salt Co. v. Davis, 21 Ohio St. 555, 1499
Pomfrey v. Village of Saratoga Springs, 104 N. Y. 459, 224, 336, 826, 936 1542, 1562, 1604, 1614, 1617, 1631
Pompton v. Cooper Union, 101 U. S. 196, 1001
Pond v. Medway, Quincy 193, 707
v. Negus, 3 Mass. 230, 301, 521, 1569
Poock v. Lafayette Bld'g Ass'n, 71 Ind. 357, 650
Pool v. City of Boston, 5 Cush. 219, 671
v. Trexler, 76 N. C. 297, 689
Pooler v. Reed, 73 Maine 129, 198
Pooley v. City of Buffalo, 122 N. Y. 592, 1264
Poor Dist. v. Byers (Pa.), 11 Atl. 242, 947
v. Poor Dist., 13 Atl. 742, 1046
Pope v. Phifer, 3 Heisk. 682, 1538
Pope Mfg. Co. v. Granger, 21 R. I. 298, 872, 926
Popel v. City of Monmouth, 81 Ill. App. 512, 604
Poppen v. Holmes, 44 Ill. 218, 533
Popper v. Broderick, 123 Cal. 456, 110
Poquet v. Town of North Hero, 44 Vt. 91, 1041
Port Clinton &c. v. Shafer, 5 Pa. Dist. Rep. 583, 499
Porter v. City of Chicago, 176 Ill. 605, 1276, 1290
v. N. Missouri R. Co., 33 Mo. 128, 1354
v. Rockford &c. R. Co., 76 Ill. 561, 1513
v. State, 78 Tex. 591, 1487, 1669
v. Village of Attica, 33 Hun 605, 1562
Port Huron v. McCall, 46 Mich. 565, 88
Port Jervis Water-Works Co. v. Village of Port Jervis, 151 N. Y. 111, 714, 930
Portland v. Improvement Co., 33 Or. 307, 1752
Portland &c. R. Co. v. City of Portland, 14 Or. 188, 578
v. Inhabitants &c., 58 Maine 23, 356, 984, 990, 991, 1022
v. Inhabitants &c., 65 Maine 63, 365, 987
Portland Sav. Bank v. City of Evansville, 25 Fed. 389, 1020
Portland Stoneware Co. v. Taylor, 17 R. I. 33, 1665, 1682
Port of Mobile v. Louisville &c. R. Co., 84 Ala. 115, 585
Portsmouth Gas Co. v. Sanford, 97 Va. 124, 1746
Portsmouth Sav. Bank v. City of Springfield, 4 Fed. 276, 998, 1023
v. Village of Ashley, 91 Mich. 670, 634
Portwood v. Board &c., 52 Miss. 523, 1519, 1522
Post v. City of Boston, 141 Mass. 189, 1586
v. Kendall Co., 105 U. S. 667, 210
v. Pearshall, 22 Wend. 425, 1564
v. Pulaski Co., 47 Fed. 282, 988
v. Supervisors &c., 105 U. S. 667, 986
v. Township Board &c., 63 Mich. 323, 1673, 1675
Postal Tel. &c. Co. v. Mayor &c., 79 Md. 502, 604
Postmaster-General v. Munger, 2 Paine C. C. 189, 318, 327
v. Rice, Gilpin 554, 650
Potter v. Canaan, 37 Conn. 224, 859
v. City of New Whatcom, 20 Wash. 589, 956
v. Collis, 46 N. Y. S. 471, 577, 1684
v. Common Council &c., 59 Mich. 8, 1675
v. Douglas Co., 87 Mo. 239, 883
v. Town of Castleton, 53 Vt. 435, 1597
v. Town of Greenwich, 26 Hun 326, 1017
Pottier &c. Co. v. Taylor, 3 MacArthur 4, 1745
Pottner v. City of Minneapolis, 41 Minn. 73, 1180
Potts v. Breen, 167 Ill. 67, 1763
v. City of Pittsburgh, 14 W. N. C. 38, 1738
v. Philadelphia, 195 Pa. St. 619, 721, 751
v. State, 75 Ind. 336, 960
Poulters' Co. v. Phillips, 6 Bing. N. C. 314, 517
Pound v. Supervisors &c., 43 Wis. 63, 570, 1133, 1255
v. Turck, 95 U. S. 459, 1576
Powell v. Board &c., 46 Wis. 210, 1552
v. Boraston, 18 C. B. 175, 127
v. City of Louisville, 21 Ky. L. 554, 1276, 1543
v. City of Madison, 107 Ind. 106, 876
v. City of Parkersburg, 28 W. Va. 698, 108, 1722
v. Farmer, 18 C. B. 168, 127
v. Heisler, 45 Minn. 549, 915
v. Pennsylvania, 127 U. S. 678, 601
v. Tuttle, 3 N. Y. 396, 295, 1539
Power v. Village of Athens, 99 N. Y. 592, 568
Powers, Appeal of, 29 Mich. 504, 1232, 1540
Powers, In re, 25 Vt. 261, 1414
v. Bears, 12 Wis. 214, 697
v. City of Council Bluffs, 50 Iowa 197, 1207, 1208
v. City of St. Paul, 36 Minn. 87, 827
v. County Com'rs, 8 Ohio St. 258, 1517
v. Harlow, 53 Mich. 507, 794
v. Hazelton &c. R. Co., 33 Ohio St. 429, 695
v. Inferior Court, 23 Ga. 65, 983
v. Mayor &c., 54 Ala. 24, 1405
v. Town of Woodstock, 38 Vt. 44, 1575
Poweshiek Co. v. Cass Co., 63 Iowa 244, 1052
Poyer v. Village of Des Plaines, 123 Ill. 111, 1697
v. Village of Des Plaines, 18 Ill. App. 225, 1120
v. Village of Des Plaines, 22 Ill. App. 576, 1406
Prather v. Jeffersonville &c. R. Co., 52 Ind. 16, 1448
Pratt v. Baupre, 13 Minn. 187, 217
v. Board &c., 15 Utah 1, 201
v. Gardner, 2 Cush. 63, 220
v. Lincoln Co., 61 Wis. 62, 593, 1204
v. Short, 53 How. Pr. 506, 655
v. Town of Swanton, 15 Vt. 147, 346, 644
Pray v. Mayor &c., 32 N. J. L. 394, 8, 9, 814, 1594
Preble v. City of Portland, 45 Maine 241, 285

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Prell v. McDonald, 7 Kan. 426, 189, 192, 488, 536, 540, 1424
Prescott v. Hayes, 42 N. H. 56, 198
v. State, 19 Ohio St. 184, 1071
President &c. v. Anthony, 18 Pick. 238, 320
v. Bank &c., 16 Ind. 105, 1511
v. Bell, 43 Wis. 488, 536, 542
v. Board &c., 104 Mass. 470, 1247
v. Chopin, 8 Met. 40, 1019
v. City of Buffalo, 56 N. Y. S. 976, 1141, 1237, 1277, 1282, 1283
v. City of Indianapolis, 12 Ind. 620, 457, 629
v. Cook, 4 Pick. 405, 776
v. Dandridge, 12 Wheat. 64, 169, 240, 260, 313, 1029, 1421, 1813
v. Diffebach, 1 Yeates 367, 695
v. District of Columbia, 4 MacArthur 43, 1725
v. Dusouchett, 2 Ind. 586, 1639
v. Edward, 5 Ired. L. 516, 1513
v. Frick, 34 Ill. 405, 992
v. Hamlin, 14 Mass 178, 1422, 1424
v. Holland, 19 Ill. 271, 529, 535
v. Iowa, 12 How. 1, 47
v. LaSalle Co., 12 Ill. 339, 107
v. Mappin, 14 Ill. 193, 662
v. Mayor &c., 7 Ohio 31, 88, 837, 971
v. McConnell, 12 Ill. 138, 1501
v. McKean, 10 Johns. 154, 86, 87
v. McKean, 11 Johns. 98, 1422, 1423
v. McKernan, 54 Wis. 487, 536
v. O'Malley, 18 Ill. 407, 1422, 1427
v. Richardson, 1 Maine 79, 1813
v. Root, 2 Met. 522, 320
v. Schroeder, 58 Ill. 353, 1076
v. Society &c., 24 N. J. L. 385, 36, 58, 61, 69, 81, 82, 83, 103 453, 1769
v. State, 45 Ala. 399, 1514, 1531, 1538
v. Thompson, 20 Ill. 197, 447, 1691
v. Village of Canandaigua, 96 Fed. 449, 1810
v. White's Lessee, 6 Pet. 431, 571, 1559
Press Pub. Co. v. Holahan, 62 N. Y. S. 872, 710, 1698, 1788
Presser v. Bice, 142 Pa. St. 263, 1412
Pressman v. Borough of Dickson City, 13 Pa. Super. Ct. 236, 1803
Preston v. City of Boston, 12 Pick. 7, 245, 1551
v. City of Cedar Rapids, 95 Iowa 71, 518, 1211
v. Culbertson, 58 Cal. 198, 372
v. Roberts, 12 Bush 570, 1253
v. Rudd, 84 Ky. 150, 1273
Prettyman v. Supervisors &c., 19 Ill. 406, 1016
Prewett v. Mississippi Co., 38 Ark. 213, 1052
Preznger v. Harness, 114 Ind. 491, 276, 277, 1150, 1201
Price v. Grand Rapids &c. R. Co., 13 Ind. 58, 291, 1256
v. Grant, 7 N. Y. S. 904, 1415
v. Inhabitants &c., 92 Mo. 378, 1559
v. Milwaukee &c. R. Co., 27 Wis. 98, 702, 1218
v. Thompson, 48 Mo. 361, 629
Price Co. v. City of Atlanta, 105 Ga. 358, 1205
Prichett v. Stanislaus Co., 73 Cal. 310, 184
Prideaux v. City of Mineral Point, 43 Wis. 513, 1584, 1597
Priest v. Cummings, 16 Wend. 617, 133
Priestly v. Foulds, 2 Scott N. R. 205, 123
Priet v. De La Montanya, 85 Cal. 148, 314
v. Reis, 93 Cal. 85, 900
Prince v. City of Fresno, 88 Cal. 407, 177
v. City of Lynn, 149 Mass. 193, 163
v. City of Quincy, 105 Ill. 138, 233, 848, 895
v. City of Quincy, 128 Ill. 443, 881, 888, 893
v. City of Quincy, 28 Ill. App. 490, 796
v. Crocker, 166 Mass. 347, 1699
v. Lewis, 5 B. & C. 363, 1402
Prince's Case, The, 8 Co. 1, 72
Prindle v. Fletcher, 39 Vt. 255, 1615
Prior Ave. In re, 71 N. W. 27, 1287
Pritchard v. Atkinson, 3 N. H. 335, 1572
Pritchett v. People, 6 Ill. 525, 288, 311
Privett v. Bickford, 26 Kan. 52, 378
Procter v. Andover, 42 N. H. 348, 687
Proctor v. Town of Lewiston, 25 Ill. 153, 1214
Proprietors &c. v. Battles, 6 Vt. 395, 86, 87
v. Chandler, 6 N. H. 271, 345
v. Hoboken Land &c. Co., 2 Beas. 81, 584
v. Horton, 6 Hill 501, 61, 83
v. New Hampshire Bridge, 7 N. H. 35, 674
v. Page, 6 N. H. 182, 345, 347, 380, 1427, 1540
v. Proprietors &c., 11 Pet. 420, 565, 584, 1463
v. Proprietors &c., 7 Pick. 344, 1813
v. Stalk, 7 Cush. 226, 1429
Prospect Park &c. R. Co. v. Williamson, 91 N. Y. 552, 680
Prosser v. Davis, 18 Iowa 367, 681
v. Secor, 5 Barb. 607, 229
Protestant Orphan Asylum's Appeal, 111 Pa. St. 135, 1233, 1234
Prout v. Inhabitants &c., 154 Mass. 450, 662
Providence v. Clapp, 17 How. 161, 8
Providence Gas Co. v. Thurber, 2 R. I. 15, 689, 1512
Providence Institution v. Gardner, 4 R. I. 484, 1510
Providence &c. Plank R. Co. v. City of Scranton, 1 Lack. Leg. N. 183, 727
Providence &c. R. Co. v. Wright, 2 R. I. 459, 1248, 1509
Provident Inst. v. Mayor &c., 113 U. S. 506, 1234, 1344
Provident Life &c. Co. v. Mercer Co., 170 U. S. 593, 1011, 1031
Provost v. Mayor &c., 3 N. Y. S. 531, 1607
Prowse v. Foot, 3 Bro. P. C. 167, 314
Pruden v. Grant Co., 12 Or. 308, 1735
v. Love, 67 Ga. 190, 221
Pryor v. City of Kansas City, 153 Mo. 135, 106
Public Park Com'rs, In re, 47 Hun 302, 1250
Public School Trustees v. Taylor, 30 N. J. Eq. 618, 109
Pueschell v. Kansas City W. & I. Works, 79 Mo. App. 459, 1363
Pugh v. City of Little Rock, 35 Ark. 75, 540, 1424
v. Edison &c. Co., 19 Ohio C. C. 594, 652
Pulitt v. Commissioners, 94 N. C. 709, 1494
Pulaski Co. v. County Judge, 37 Ark. 339, 434
v. Pollock, 9 S. E. 1065, 911
v. Reeve, 42 Ark. 54, 7, 14

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Pulaski Co. v. Thompson, 83 Ga. 270, 911
Pulitzer v. City of New York, 62 N. Y. S. 587, 1790
Pulliam v. Runnels Co., 79 Tex. 363, 1490
Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 1399
Pumpelly v. Green Bay Co., 13 Wall. 166, 673, 791
Purcell v. Booth, 6 Dak. 17, 1419
v. Long Island City, 36 N. Y. S. 290, 742
v. Town of Bear Creek, 138 Ill. 524, 908
Purdy v. Lansing, 128 U. S. 557, 991
v. People, 4 Hill 384, 55, 117
Purinton v. Inhabitants &c., 174 Mass. 556, 1791
Purrington v. Town of Warren, 49 Vt. 19, 829
Pursell v. Mayor &c., 85 N. Y. 330, 1205, 1264
Pusey v. City of Allegheny, 98 Pa. St. 522, 680, 1220
Putnam v. Douglas Co., 6 Or. 328, 704
v. Langley, 133 Mass. 204, 302, 1692
Pybus v. Gibb, 6 El. & Bl. 902, 318
Pye v. City of Mankato, 36 Minn. 373, 1215
v. City of Mankato, 38 Minn. 536, 827
v. Peterson, 45 Tex. 312, 594, 1392

Q

Quaw v. Paff, 98 Wis. 586, 1731
Queen v. Aberdare Canal Co., 14 Q. B. 854, 346
v. Abingdon, L. R. 5 Q. B. 406, 1043
v. Board, L. R. 8 Q. B. 227, 1517
v. Inhabitants &c., L. R. 1 Q. B. 227, 1043
v. Justices, 4 Q. B. D. 522, 529
v. Gilbert, 2 Pug. & B. 619, 531
v. Governors &c., 8 Ad. & El. 632, 200
v. Local Government Board, L. R. 8 Q. B. 227, 37
v. Mayor &c., 8 Ad. & El. 633, 213
v. Mayor &c., 10 Ad. & El. 281, 11
v. Mayor &c., 19 Q. B. D. 602, 832
v. Milledge, 4 Q. B. D. 332, 529
v. Paramore, 10 Ad. & El. 286, 11
v. Saddlers' Co., 10 H. L. Cas. 404, 207
v. Saintiff, 6 Mod. 255, 1561
v. St. Ives, L. R. 9 Q. B. 467, 1043
v. St. Leonard, 1 Q. B. 21, 1043
v. Thompson, 5 Q. B. 477, 11
v. Town Council &c., 4 Q. B. 891, 971
v. Worcester, L. R. 9 Q. B. 340, 1043
v. York, 2 Q. B. 847, 11
Queensbury v. Culver, 19 Wall. 83, 1528
Quick v. Board &c., 20 Ky. L. 1457, 1346
v. Village of River Forest, 130 Ill. 323, 1175
Quigg v. Evans, 121 Cal. 546, 183
Quigley v. City of Aurora, 50 Ind. 28, 535
Quill v. City of Indianapolis, 124 Ind. 292, 632, 889
v. Mayor &c., 55 N. Y. S. 889, 785
Quimby v. Vermont &c. R. Co., 23 Vt. 387, 675
Quinchard v. Board &c., 113 Cal. 664, 1712
Quincy v. Cooke, 107 U. S. 549, 992
v. Jackson, 113 U. S. 332, 1535
Quincy &c. R. Co. v. Morris, 84 Ill. 410, 983
Quinette v. City of St. Louis, 76 Mo. 402, 516, 523
Quinhard v. City of New York, 64 N. Y. S. 904, 184
Quinlan v. City of Utica, 11 Hun 217, 1617, 1625
Quinn v. Mayor &c., 45 N. Y. S. 7, 719
v. State, 35 Ind. 485, 369
Quint v. City of Merrill, 105 Wis. 406, 490
Quintini v. Board &c., 64 Miss. 483, 1119
Quong Woo, In re, 13 Fed. 229, 1400, 1405, 1539

R

Racho v. City of Detroit, 90 Mich. 92, 1593
Radcliff v. Mayor &c., 4 N. Y. 195, 820, 823, 1603, 1776
Rader v. Southeasterly Road Dist., 36 N. J. L. 273, 453
Radway v. Briggs, 37 N. Y. 256, 1557
Rae v. Mayor &c., 51 Mich. 526, 859, 1088
Raff v. Town of Calhoun, 110 Ga. 806, 1793
Ragan v. Kansas City &c. R. Co., 111 Mo. 456, 1568
Rahway Sav. Inst. v. Mayor &c., 53 N. J. L. 48, 1741
Rail v. Potts, 8 Humph. 225, 222
Railroad Comm. Cases, 116 U. S. 307, 5, 6
Railroad Co. v. Alabama, 101 U. S. 832, 18
v. Bentley, 64 Ill. 438, 591
v. Chicago, 90 Ill. 573, 1248
v. City of Dayton, 23 Ohio St. 510, 591
v. City of Defiance, 52 Ohio St. 262, 1352, 1379
v. Commissioners, 98 U. S. 543, 1552
v. Dodge Co. Com'rs, 98 U. S. 541, 1717
v. Gaines, 97 U. S. 697, 1524
v. Georgia, 98 U. S. 359, 104
v. Hansing, 15 Wall. 649, 1779
v. Houston, 95 U. S. 697, 1633
v. Maine, 96 U. S. 499, 104
v. National Bank, 102 U. S. 14, 1031
v. Otoe Co., 16 Wall. 667, 983
v. Otoe Co., 1 Dill. 338, 1740
v. Richmond, 96 U. S. 521, 510, 596, 1358
v. Tennessee, 101 U. S. 337, 18
v. Town of Lake, 71 Ill. 333, 591
v. Village of Belle Center, 48 Ohio St. 273, 678
Railroad Nat'l Bank v. City of Lowell, 109 Mass. 214, 237
Railway Co. v. City of Louisville, 8 Bush 415, 588
v. Philadelphia, 101 U. S. 528, 1509
v. Sprague, 103 U. S. 756, 1027
v. Stone, 54 Kan. 83, 1375
v. Wilson Co., 89 Tenn. 597, 1546
Raines v. Simpson, 50 Tex. 495, 224
Rains v. Oshkosh, 14 Wis. 403, 65
Raisler v. Mayor &c., 66 Ala. 194, 245, 1551
Raleigh &c. R. Co. v. Davis, 2 Dev. & B. 451, 4, 6, 673
Ralls Co. v. Douglass, 105 U. S. 728, 995
Ralls Co. Court v. United States, 105 U. S. 733, 412, 1523, 1528, 1533, 1534, 1535
Ralston v. Town of Weston, 46 W. Va. 544, 1754

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Ramish v. Hartwell, 126 Cal. 443, 1028, 1166, 1310, 1505
Ramsay v. Hoeger, 76 Ill. 432, 1721
Ramsey v. National Contracting Co., 63 N. Y. S. 286, 1363
v. People, 142 Ill. 380, 734
v. Ramsey, 121 Ind. 215, 1063
v. Riley, 13 Ohio 157, 221
Ramson v. Mayor &c., 24 Barb. 226, 664
Ramthun v. Halfman, 58 Tex. 551, 1561
Rand v. Wilder, 11 Cush. 294, 343, 348
Randall v. Christiansen, 76 Iowa 169, 1571
v. Conway, 63 N. H. 513, 1569
v. Eastern &c. R. Co., 106 Mass. 276, 263
v. Van Vechten, 19 Johns. 60, 262, 263
Randolph v. Good, 3 W. Va. 551, 369
v. United States, 21 Ct. Cl. 282, 773
Randolph Co. v. Post, 93 U. S. 502, 991, 995, 1001
Ranney v. Bader, 67 Mo. 476, 618, 638
Rannsh v. Hartwell, 126 Cal. 443, 719
Ransom v. Boal, 29 Iowa 68, 629
v. City of Belvidere, 87 Ill. App. 167, 1364
Rany v. Governor, 4 Blackf. 2, 326
Rapelye v. Prince, 4 Hill 119, 1757
v. Van Sickler, 1 Edm. Sel. Cas. 175, 1471
Rapho Tp. v. Moore, 68 Pa. St. 404, 1575
Rathbon v. Budlong, 15 Johns. 1, 216
Rathbone v. Board &c., 73 Fed. 395, 973, 1006, 1030
v. Board &c., 83 Fed. 125; 49 U. S. App. 577, 10, 12, 1031
v. Wirth, 150 N. Y. 459, 1829
Rathbun v. Acker, 18 Barb. 393, 1254
Ratliffe v. County Court, 36 W. Va. 202, 902
Raton Water-works Co. v. Town of Raton, 9 N. M. 70, 728
Rau v. Little Rock, 34 Ark. 303, 519
Ravenna v. Pennsylvania Co., 45 Ohio St. 118, 621
Rawlings v. Biggs, 85 Ky. 251, 708
Rawson v. City of Chicago, 185 Ill. 87, 511, 1294
v. School Dist., 100 Mass. 134, 1533
v. Spencer, 113 Mass. 40, 1538
Ray v. Bank, 3 B. Mon. 510, 1725
v. City of Jeffersonville, 90 Ind. 567, 1261
v. City of Manchester, 46 N. H. 59, 264, 820
v. City of St. Paul, 40 Minn. 458, 1597
v. City of St. Paul, 44 Minn. 340, 827
v. Wilson, 29 Fla. 342, 960
Ray Co. v. Bentley, 49 Mo. 286, 776
v. Vansycle, 96 U. S. 675, 995, 1023
Raymond v. City of Lowell, 6 Cush. 524, 1637, 1638
v. City of Sheboygan, 70 Wis. 318, 1588
v. Fish, 51 Conn. 80, 1080, 1091, 1098, 1114, 1386
Raynsford v. Phelps, 43 Mich. 342, 221, 222
Read v. City of Buffalo, 74 N. Y. 463, 963
v. City of Camden, 54 N. J. L. 347, 544, 592, 1164
v. Plattsmouth, 107 U. S. 568, 992, 1522
v. Town of Calais, 48 Vt. 7, 829
Reading City v. Bitting, 167 Pa. St. 21, 603
v. Reiners, 167 Pa. St. 41, 1341
Reardon v. City of San Francisco, 66 Cal. 492, 678
v. City of St. Louis, 36 Mo. 555, 776
Reassessment &c., In re, 68 Minn. 242, 1287
Rebenack, In re, 62 Mo. App. 8, 1762
Reckner v. Warner, 22 Ohio St. 275, 699
Rector v. State, 6 Ark. 187, 1411
Red v. City Council &c., 25 Ga. 386, 301, 987
v. Supervisors of Henry Co., 31 Gratt. 695, 987, 1023
Reddell v. Bryan, 14 Md. 444, 688
Reddick v. People, 82 Ill. App. 85, 1644
Redersheimer v. Flower, 52 La. An. 2089, 1142
Redford v. City of Woburn, 176 Mass. 520, 1365, 1801
v. Coggeshall, 19 R. I. 313, 1358
Red Rock v. Henry, 106 U. S. 596, 995
Reed v. City of Madison, 83 Wis. 171, 1595
v. City of Spokane, 21 Wash. 218, 1803
v. City of Toledo, 18 Ohio 161, 1232
v. Conway, 20 Mo. 22, 221
v. Erie, 75 Pa. St. 346, 1313
v. Home Savings Bank, 130 Mass. 443, 812
v. Inhabitants &c., 20 Maine 246, 776
v. Inhabitants &c., 117 Mass. 384, 354, 355, 362
v. Inhabitants &c., 152 Mass. 500, 280, 843, 1037
v. Town of Orleans, 1 Ind. App. 25, 857, 1741
Reeder v. State, 98 Ind. 114, 229
Reemelin v. Mosby, 47 Ohio St. 570, 169
Rees v. City of Watertown, 19 Wall. 107, 141, 142, 458, 1523, 1526, 1529, 1737
Reeve School Tp. v. Dodson, 98 Ind. 497, 210, 647, 863
Reeves v. Anderson, 13 Wash. 17, 75
v. Treasurer of Wood Co., 8 Ohio St. 333, 689, 1084
Reeves Co. v. Pecos Co., 69 Tex. 177, 444
Regenstein v. City of Atlanta, 98 Ga. 167, 1130, 1705
Regents &c. v. Detroit &c. Soc., 12 Mich. 138, 262
v. Williams, 9 Gill & J. 365, 472, 756
Regina v. Bailiffs, 2 Ld. Raym. 1232, 207, 286
v. Bewdley, 1 P. Wms. 207, 92, 445
v. Blizzard, L. R. 2 Q. B. 55, 199
v. Bowen, 1 Denison 23, 539
v. Bradley, 3 El. & El. 634, 378
v. Coaks, 3 El. & Bl. 249, 378
v. Councillors of Derby, 7 Ad. & El. 419, 155
v. Cumberlege, 36 L. T. 700, 174
v. Franklin, 6 Ir. R. C. L. 239, 378
v. Grimshaw, 10 Q. B. 747, 276
v. Hiorns, 7 Ad. & El. 960, 155
v. Howard, 4 Ont. 377, 1392
v. Justices &c., 8 Ad. & El. 173, 346
v. Lander, 1 Ir. R. C. L. 225, 346
v. Lane, 2 Ld. Raym. 1304, 199
v. Ledgard, 8 Ad. & El. 535, 155
v. Mayor &c., 7 Ad. & El. 963, 157
v. Mayor &c., 9 Ad. & El. 670, 127
v. Mayor &c., 10 Ad. & El. 66, 128
v. Mayor &c., 10 Ad. & El. 281, 667
v. Mayor &c., L. R. 3 Q. B. 629, 155, 378
v. Mayor &c., L. R. 4 Q. B. 114, 127
v. Mayor &c., 6 Q. B. 433, 261
v. Mayor &c., 7 Q. B. 908, 128

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Regina v. Mayor &c., 20 L. J. Q. B. 281, 128
v. Mayor &c., 11 L. T. (N. S.) 417, 35, 77, 78
v. Mayor &c., 28 L. T. 629, 202
v. Overseers of Christ Church, 7 E. & B. 409, 157
v. Paramore, 10 Ad. & El. 286, 667
v. Petrie, 30 Eng. L. & Eq. 207, 1559
v. Rippon, 1 Q. B. D. 217, 157
v. Rowley, 3 Q. B. 143, 157
v. Sainthill, 2 Ld. Raym. 1174, 1575
v. Staples, 9 Best & S. 928, 1693
v. Taylor, 11 A. & E. 949, 123
v. Thomas, 8 Ad. & El. 183, 276
v. Town Council &c., 4 Q. B. 893, 667
v. Whipp, 4 Q. B. 141, 276
Rehberg v. Mayor &c., 91 N. Y. 137, 826, 1375, 1592, 1594, 1621
Rehmke v. Goodwin, 2 Wash. 676, 892
Reid v. Board &c., 128 N. Y. 364, 1205
v. City of Chicago, 83 Ill. App. 554, 1333, 1335, 1339
v. Humphreys, 7 Jones L. 258, 312
v. Mayor &c., 80 Ga. 755, 1494
Reiff v. Connor, 10 Ark. 241, 301, 522
Reighard v. Flinn, 29 Pittsb. Leg. J. 338, 1373
Reilly v. City of Albany, 112 N. Y. 30, 741, 1186, 1306, 1755
v. City of New York, 54 N. Y. Super. Ct. 463, 1187
v. City of Racine, 51 Wis. 526, 1322, 1563
Reily, Ex parte, 85 Cal. 632, 1410
Reineman v. Covington &c. R. Co., 7 Neb. 310, 982
Reinhard v. Mayor &c., 2 Daly 243, 526, 1596
Reining v. City of Buffalo, 102 N. Y. 308, 829, 1746, 1790
v. New York &c. R. Co., 128 N. Y. 157, 588, 1581
Reinken v. Fuehring, 130 Ind. 382, 1234
Reilstab v. Borough of Belmar, 58 N. J. L. 489, 66
Remington v. Harrison Co. Court, 12 Bush 148, 662
Reno W. &c. Co. v. Osburn, 25 Nev. 53, 749
Rens v. City of Grand Rapids, 73 Mich. 237, 233, 235, 1189, 1212
Rensselaer &c. R. Co. v. Davis, 43 N. Y. 137, 675, 686
Rentz v. City of Detroit, 48 Mich. 544, 1206
Renwick v. Hall, 84 Ill. 162, 1689
Republic &c. Co. v. Pollak, 75 Ill. 292, 1513
Requa v. City of Rochester, 45 N. Y. 129, 816, 826, 1592, 1639
Resley v. Village of Howell, 64 Fed. 453, 1011
Respublica v. Dallas, 3 Yeates 300, 189, 1418
v. Duquet, 2 Yeates 493, 526, 1121, 1392
Ressegieu v. City of Sioux City, 94 Iowa 543, 1219
Retreat v. City of Buffalo, 53 N. Y. S. 1113, 1285, 1289
Rettinghouse v. City of Ashland, 106 Wis. 595, 174
Reubelt v. School Town of Noblesville, 106 Ind. 478, 1038
Reusch v. Chicago &c. R. Co., 57 Iowa 687, 674
Reuter v. Lame, 94 Wis. 300, 1758
Reuting v. City of Titusville, 175 Pa. St. 512, 711, 753, 1136
Revill v. Pettit, 3 Met. 314, 335
Rex v. Amery, 2 T. R. 515, 445
v. Andover, 1 Ld. Raym. 710, 200
v. Ashwell, 12 East 22, 520, 521
v. Atkins, 3 Mod. 3, 166, 271
v. Axmouth, 8 East 383, 128
v. Bailey, 1 Mood. C. C. 23, 127
v. Bankes, 3 Burr. 1452, 1657
v. Bellringer, 4 T. R. 810, 157, 270, 290
v. Bird, 13 East 367, 520, 521
v. Bower, 1 B. & C. 492, 157, 270, 290
v. Bridge, 1 M. & S. 76, 378
v. Bridgewater, 3 T. R. 550, 128
v. Buller, 8 East 389, 272
v. Bumstead, 2 B. & Ad. 699, 185
v. Burgess, 2 Burr. 908, 1557, 1561
v. Carlisle, Fortesc. 200, 202
v. Carroll, 1 Leach 237, 127
v. Carter, Cowp. 58, 270
v. Chalke, 1 Ld. Raym. 225, 204, 207
v. Chitty, 5 Ad. & El. 609, 185
v. Company &c., 8 T. R. 356, 270
v. Corry, 5 East 372, 272
v. Coventry, 1 Ld. Raym. 391, 200
v. Croke, Cowp. 26, 296
v. Cross, 3 Camp. 224, 1610
v. Dawes, 4 Burr. 2277, 270
v. Derby, Cas. temp Hardw. 154, 207
v. Devonshire, 1 B. & C. 609, 157, 270, 290
v. Doncaster, 2 Burr. 738, 207
v. Ellis, 9 East 252, 187
v. Faversham Fishermen's Co., 8 T. R. 352, 207, 520
v. Foxcroft, 2 Burr. 1017, 378
v. Gabarian, 11 East 77, 271, 272
v. Greet, 8 B. & C. 363, 157
v. Grimes, 5 Burr. 2598, 171, 270
v. Grosvenor, 7 Mod. 198, 123, 446
v. Harris, 1 B. & Ad. 936, 274, 276
v. Harris, 3 Burr. 1420, 1666
v. Hawkins, 10 East 211, 378
v. Head, 4 Burr. 2515, 289, 296
v. Headley, 7 B. & C. 496, 157, 290
v. Hearle, 1 Stra. 626, 166
v. Hebden, Andr. 389, 171, 270, 272
v. Hill, 4 B. & C. 426, 270, 271
v. Holmes, Hil. 9 Geo. II, B. R., 1657
v. Home, 2 Corp. 672, 538
v. Hoyte, 6 T. R. 430, 157
v. Inhabitants &c., 13 East 220, 123, 446
v. Jones, 1 B. & Ad. 677, 198
v. Jones, 3 Camp. 230, 1610
v. Lathrop, 1 W. Bl. 468, 270
v. Lisle, Andr. 163, 2 Stra. 1090, 171, 195, 270, 272, 1657
v. Liverpool, 2 Burr. 723, 207
v. Lyme Regis, 1 Doug. 149, 201, 204, 207
v. Mason, 2 T. R. 581, 538
v. May, 4 B. & Ad. 843, 157
v. May, 5 Burr. 2681, 270, 271
v. Mayor &c., 4 D. P. C. 562, 1409
v. Mayor &c., 5 T. R. 66, 171, 270
v. Mayor &c., 2 Burr. 723, 204, 277
v. Mayor &c., 4 Burr. 2008, 1657
v. Mayor &c., Mich. 33 Car. II, 2 Show. 262, 123
v. Mayor &c., 8 Mod. 111, 289
v. Mayor &c., 8 Mod. 127, 445
v. Mayor &c., 1 Ld. Raym. 426, 296
v. Mayor &c., Cas. temp. Hardw. 147, 271
v. Mayor &c., 1 Lev. 291, 200
v. Medley, 6 Car. & P. 292, 809
v. Miller, 6 T. R. 268, 157, 270, 446

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Rex v. Monday, Cowp. 530, 157, 270, 293, 378
v. Morris, 3 East 214, 445
v. Morris, 4 East 17, 270
v. Oakehampton, Burr. S. C. 5, 128
v. Osbourne, 4 East 326, 445
v. Oxford, 2 Salk. 428, 200
v. Oxfordshire, 20 Eng. C. L. 289, 1577
v. Parry, 6 A. & E. 810, 123
v. Pasmore, 3 T. R. 199, 92, 445
v. Philips, 1 Stra. 394, 166
v. Ponsonby, 1 Ves. Jr. 1, 204
v. Richardson, 1 Burr. 517, 201, 204, 207
v. Saunders, 3 East 119, 123, 446
v. Sefton, Russ. & Ry. 202, 127
v. Sparling, 1 Stra. 497, 538
v. Spencer, 3 Burr. 1827, 185
v. Steward &c., 5 B. & Ald. 691, 1409
v. Stewart, 4 East 17, 445
v. St. Luke's Hospital, 2 Burr. 1053, 128
v. Taylor, 3 Salk. 231, 201, 204
v. Theodorick, 8 East 543, 270, 271
v. Thornton, 4 East 294, 166, 270
v. Tidderley, 1 Sid. 14, 204
v. Tizzard, 9 B. & C. 418, 198
v. Trapshaw, 1 Leach 427, 127
v. Trew, 2 Barnard. 370, 272
v. Tripp, Mich. T. 1836, 128
v. Tucker, 1 Barnard. 26, 271
v. Vario, Cowp. 248, 270, 373
v. Wake, 1 Barnard. 80, 271
v. Warrington, 1 Salk. 152, 295
v. Westwood, 4 B. & C. 781, 289, 296
v. Weymouth, 7 Mod. 373, 185
v. White, 5 A. & E. 613, 123
v. Williams, 2 Mau. & S. 141, 272
v. Wilton, 5 Mod. 257, 207
Rexford v. Knight, 11 N. Y. 308, 705
Reynolds, In re, 42 N. Y. S. 1, 1684
v. Baldwin, 1 La. An. 162, 189, 286, 296
v. Board of Education &c., 53 N. Y. S. 75, 788
v. City of Waterville, 92 Maine 292, 881
v. Commissioners &c., 5 Ohio 204, 629
v. Inhabitants &c., 6 Met. 340, 343, 344, 965
v. Lyon Co., 97 Fed. 155, 1029
v. Mayor &c., 8 Barb. 597, 666
v. Reynolds, 15 Conn. 83, 687
v. United States, 98 U. S. 145, 47
Reynolds Land &c. Co. v. McCabe, 72 Tex. 57, 362, 1473
Rhea v. Umatilla Co., 2 Or. 300, 1287
Rhine v. City of McKinney, 53 Tex. 354, 698
Rhoda v. Alameda Co., 69 Cal. 523, 934
Rhode Island Mortgage &c. Co. v. City of Spokane, 19 Wash. 616, 742
Rhodes v. City of Cleveland, 10 Ohio 159, 680, 811
v. Otis, 33 Ala. 578, 1814
Rhyner v. City of Menasha, 107 Wis. 201, 1324, 1360, 1801
Rice v. City of Des Moines, 40 Iowa 638, 891
v. City of Evansville, 108 Ind. 7, 1179
v. City of Flint, 67 Mich. 401, 1217
v. City of Milwaukee, 100 Wis. 516, 879, 1731
v. Foster, 4 Harr. 479, 69, 520
v. Gwinn, 49 Pac. 412, 179, 955
v. Plymouth Co., 43 Iowa 136, 619, 1088
Rice v. Smith, 9 Iowa 570, 556, 651
v. State, 3 Kan. 141, 1412
v. Town of Montpelier, 19 Vt. 470, 1597
v. Wood, 113 Mass. 133, 211
Rich v. City of Chicago, 59 Ill. 286, 299, 477, 478, 1146, 1421
v. City of Chicago, 152 Ill. 18, 499, 550, 1249, 1250
v. City of Naperville, 42 Ill. App. 222, 508
v. City of Rockland, 87 Maine 188, 1335
v. Errol, 51 N. H. 350, 868
v. Mentz Tp., 134 U. S. 632, 987
v. Player, 2 Show. 262, 295
v. Town of Mentz, 19 Fed. 725, 990
Richards v. Brice, 15 Daly 144, 1419
v. City of Cincinnati, 31 Ohio St. 506, 1234
v. City of Oshkosh, 81 Wis. 226, 1802
v. Clarksburg, 30 W. Va. 491, 202
v. Independent School Dist., 46 Fed. 460, 969
v. Inhabitants &c., 13 Gray 344, 1601
v. Mayor &c., 16 J. & Sp. 315, 783
v. Osceola Bank, 79 Iowa 707, 910
v. Supervisors, 69 Iowa 612, 897
v. Town of Clarksburg, 30 W. Va. 491, 204, 279, 286
Richardson v. Boston, 24 How. 188, 576
v. City of Marceline, 73 Mo. App. 360, 1337, 1796
v. City of Syracuse, 58 N. Y. S. 487, 1330
v. City of Webster City, 111 Iowa 427, 1776, 1780
v. Davis, 91 Md. 390, 1315
v. Heydenfeldt, 46 Cal. 68, 509
v. Morgan, 16 La. An. 429, 1270
v. Smith, 59 N. H. 517, 706
v. Vermont &c. R. Co., 25 Vt. 465, 676
Richardson Co. v. Barstow, 26 Abb. N. C. 150, 1583
v. Frederick, 24 Neb. 596, 1068
v. Smith, 25 Neb. 767, 1069
Richcreek v. Moorman, 14 Ind. App. 370, 1286
Riche v. Bar Harbor Water Co., 75 Maine 91, 688
Richeson v. People, 115 Ill. 450, 991
Richland Co. v. Lawrence Co., 12 Ill. 1, 89, 103, 761, 1084, 1537, 1538
v. Village of Richland Center, 59 Wis. 591, 1509
Richlicke v. City of St. Louis, 98 Mo. 497, 1180
Richmond v. City of Lynchburg, 81 Va. 473, 1269
v. Judah, 5 Leigh 305, 246
Richmond City v. Epps, 98 Va. 235, 1687
Richmond &c. Co. v. Town of West Point, 94 Va. 668, 609
Richmond Co. &c. Co. v. Town of Middletown, 59 N. Y. 228, 566, 618, 642, 1404
Richmond Mayoralty Case, 19 Gratt. 673, 1411
Richmond &c. R. Co. v. Louisa &c. R. Co., 13 How. 71, 585, 1323, 1463
Richter v. City of New York, 54 N. Y. S. 150, 1280
Rickert v. Drainage Dist., 27 N. E. 86, 1544
Ricketson v. City of Milwaukee, 105 Wis. 591, 724, 750, 1704, 1711
Ricketts v. Corporation &c. of Markdale, 31 Ont. 610, 1363

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Ricketts v. Spraker, 77 Ind. 371, 1201, 1288
v. Village of Hyde Park, 85 Ill. 110, 707, 719
Rickords v. City of Hammond, 67 Fed. 380, 1705
Riddel v. School District, 15 Kan. 168, 326
Riddick v. Amelin, 1 Mo. 5, 47
Riddle v. Bedford Co., 7 S. & R. 386, 197, 198, 289
v. Proprietors &c., 7 Mass. 169, 7, 142, 776
v. Village of Westfield, 65 Hun 432, 1625
Rideout v. Inhabitants &c., 1 Allen 232, 362, 1485
Rider v. City of Amsterdam, 65 N. Y. S. 579, 791
Rider Life Raft Co. v. Roach, 97 N. Y. 378, 746
Ridge Av. &c. R. Co. v. Philadelphia City, 124 Pa. St. 219, 1159
Ridgeway v. West, 60 Ind. 371, 532
Ridley v. Doughty, 85 Iowa 418, 303
v. Sherbrook, 3 Coldw. 569, 369
Riest v. City of Goshen, 42 Ind. 339, 1639
Riggs v. Board &c., 29 Mich. 262, 1317
v. Boylan, 4 Biss. 445, 228
v. Johnson Co., 6 Wall. 166, 1523, 1527, 1528
Rigler v. Charlotte &c. R. Co., 94 N. C. 604, 1633
Rigney v. City of Chicago, 125 U. S. 161, 678
Riker v. Jersey City, 38 N. J. L. 225, 242
Riley v. City of Kansas, 31 Mo. App. 439, 1432
v. City of Rochester, 9 N. Y. 64, 1536
Ring v. City of Cohoes, 77 N. Y. 83, 1599
v. Grout, 7 Wend. 341, 1485
v. Johnson Co., 6 Iowa 265, 1014
Ripley v. Board &c., 40 N. J. L. 45, 1577
v. Warren, 2 Pick. 592, 1739
Risley v. Village of Howell, 64 Fed. 453, 1002, 1005
Rison v. Farr, 24 Ark. 161, 369
Ritchie v. City of South Topeka, 38 Kan. 368, 166, 1288, 1534
v. Franklin Co., 22 Wall. 67, 643
v. People, 155 Ill. 98, 734
Ritter v. Patch, 12 Cal. 298, 1720, 1722
Ritterskamp v. Stifel, 59 Mo. App. 510, 1373
Rives v. City of Columbia, 80 Mo. App. 173, 223, 796, 1773
Rivers v. City Council &c., 65 Ga. 376, 821, 830
Rivet v. City of New Orleans, 35 La. An. 134, 651
Roach v. City of Ogdensburg, 36 N. Y. S. 112, 793
Road Case, In re, 17 Pa. St. 71, 987
Road in Roaring Brook Tp., In re, 140 Pa. St. 632, 1170
Roads of Sadsbury Tp., In re, 147 Pa. St. 471, 1170
Roanoke Gas Co. v. City of Roanoke, 88 Va. 810, 587, 1162
Robb v. Carter, 65 Md. 321, 168, 183
v. Maysville &c. Tpk. Co., 3 Met. 117, 702
Robbins v. Board &c., 91 Ind. 537, 842
v. Board &c., 104 Ind. 321, 1040
v. Chicago, 4 Wall. 657, 1587, 1590, 1598
v. Inhabitants &c., 20 Pick. 345, 1042
Robbins v. Milwaukee &c. R. Co., 6 Wis. 636, 704
v. Shelby Co. Taxing Dists., 120 U. S. 489, 1399
Robert v. Board &c., 158 N. Y. 673, 1346
v. City of Boston, 5 Cush. 198, 1494
v. Sadler, 104 N. Y. 229, 1214
Roberts v. Bolles, 101 U. S. 119, 1001, 1004, 1005
v. Broadfield, 12 App. D. C. 453, 1731
v. City of Cambridge, 164 Mass. 176, 714
v. City of Detroit, 102 Mich. 64, 1376
v. City of Louisville, 93 Ky. 95, 1371, 1372
v. City of Montreal, 16 Rap. Jud. Que. C. S. 342, 1377
v. Commissioners, 10 Kan. 29, 1072
v. First Nat'l. Bank, 8 N. D. 504, 732, 1260, 1268
v. Inhabitants &c., 140 Mass. 129, 1624
v. Ogle, 30 Ill. 459, 607, 1085
v. People, 9 Colo. 458, 932
v. Village of St. James, 76 Minn. 456, 930
v. Williams, 15 Ark. 43, 687
Roberts & Co. v. City of Paducah, 95 Fed. 62, 519, 872
Robertson v. Breedlove, 61 Tex. 316, 628, 837, 839, 1728
v. City of Omaha, 55 Neb. 718, 725, 1298
v. City of Rockford, 21 Ill. 451, 103, 983
v. Frank Bros. Co., 132 U. S. 17, 1263
v. Lambertville, 38 N. J. L. 69, 537
v. Sickel, 127 U. S. 507, 225
Roble v. Trustees &c., 35 Barb. 319 48, 87
Robins v. Ackerly, 91 N. Y. 98, 19
Robinson, Ex parte, 12 Nev. 263, 1508, 1521
v. Benton Co., 49 Ark. 49, 189, 1413
v. Burlington, 50 Iowa 240, 247
v. Chamberlain, 34 N. Y. 389, 222, 224
v. City Council &c., 2 Rich. 317, 245, 1521
v. City of Cedar Rapids, 100 Iowa 662, 1331
v. City of Evansville, 87 Ind. 334, 264, 774
v. City of St. Louis, 28 Mo. 488, 262
v. Fitchburg &c. R. Co., 7 Gray 92, 1618
v. Greenville, 42 Ohio St. 625, 799, 808, 820
v. Hague, 63 Iowa 273, 1490
v. Hamilton, 60 Iowa 134, 1078
v. Mayor &c., 8 Houst. 409, 1327, 1340
v. Mayor &c., 1 Humph. 156, 1509
v. Oceanic &c. Co., 112 N. Y. 315, 137
v. Pioche, 5 Cal. 460, 1641
v. Rippey, 111 Ind. 112, 696, 1201
v. Rohr, 73 Wis. 436, 224
v. Rowland, 26 Hun 501, 229, 230
v. Supervisors, 43 Cal. 353, 1523, 1525, 1529, 1531
v. Swope, 12 Bush 21, 687
Roche v. Jones, 87 Va. 484, 154, 169, 186, 193, 288
Rochefort v. Inhabitants &c., 154 Mass. 140, 1585, 1616
Rochester v. Montgomery, 72 N. Y. 65, 1599

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Rochester &c. Co. v. Clarke Nat'l. Bank, 60 Barb. 234, 195
Rochester White Lead Co. v. City of Rochester, 3 N. Y. 463, 1208
Rock v. City of New York, 63 N. Y. S. 825, 179
v. Katzenstein, 52 Ark. 107, 1205
v. Stinger, 36 Ind. 346, 319
Rock Creek Tp. v. Strong, 96 U. S. 271, 1016, 1017
Rockingham &c. Bank v. Portsmouth, 52 N. H. 17, 1722
Rock Island Co. v. Sage, 88 Ill. 582, 1084
Rodger v. City of Philadelphia, 181 Pa. St. 273, 1778
Rodman v. Harcourt, 4 B. Mon. 224 185, 198
v. Justices, 3 Bush 144, 1529
v. Town of Washington, 122 N. C. 39, 986
Roe v. Lincoln Co., 56 Wis. 66, 652, 1702
v. Town of Phillipi, 45 W. Va. 785, 880
Roeller v. Ames, 33 Minn. 132, 1744
Roffignac St., In re, 4 Rob. 357, 699
Rogan v. City of Watertown, 30 Wis. 259, 623
Rogers v. Brunton, 10 Q. B. 26, 467
v. Burlington, 3 Wall. 654, 561, 634, 972, 983, 1001
v. City of Bloomington, 22 Ind. App. 601, 1329
v. City of St. Charles, 3 Mo. App. 41, 701
v. City of St. Paul, 22 Minn. 494, 1139, 1165, 1253
v. City of St. Paul, 79 Minn. 5, 1553, 1791
v. Common Council &c., 123 N. Y. 173, 1825
v. Jones, 1 Wend. 237, 19, 98, 495, 496, 519
v. People, 68 Ill. 154, 12
v. Randall, 29 Mich. 41, 1161
v. Slonaker, 32 Kan. 191, 199, 275
v. Trustees &c., 11 Ky. L. 934, 1490, 1492
v. Voorhees, 124 Ind. 469, 947
Rogge v. City of Elizabeth, 64 N. J. L. 491, 1782
Rohde v. Seavey, 4 Wash. 91, 408
Rohland v. St. Louis &c. R. Co., 89 Mo. 180, 1416
Rolf v. City of Greenville, 102 Mich. 544, 1344
Rolfs, In re, 30 Kan. 758, 1414
Rollins v. Board &c., 80 Fed. 692, 49 U. S. App. 399, 986, 1031
v. Lake Co., 34 Fed. 845, 887
v. Town of Chester, 46 N. H. 411, 359, 363
v. Wright, 93 Cal. 395, 1166, 1505
Rollstone Nat'l Bank v. Carleton, 136 Mass. 226, 329
Rolph v. City of Fargo, 7 N. D. 640, 1242, 1269, 1292, 1302, 1303
Rommeney v. City of New York, 63 N. Y. S. 186, 1329, 1363
Ronde v. Mayor &c., 18 Fed. 719, 1027
Rondot v. Rogers Tp., 99 Fed. 202, 1002, 1005, 1029, 1031, 1033
Ronkendorff v. Taylor, 4 Pet. 349, 1422
Rooney v. Inhabitants &c., 128 Mass. 580, 1584
Roosevelt v. Draper, 23 N. Y. 318, 1730
v. Godard, 52 Barb. 533, 517
Root v. Alexander, 18 N. Y. S. 632, 1066
Roper v. Inhabitants &c., 28 Maine 193, 340, 343
v. McWhorter, 77 Va. 214, 629, 651
Roper v. Town of Laurinburg, 90 N. C. 427, 181, 663, 664
v. Trustees &c., 91 Ill. 518, 211, 321, 324
Rose v. City of St. Charles, 49 Me. 509, 1420
v. Trestrail, 62 Mo. App. 352, 1149
v. Turnpike Co., 3 Watts 46, 447
Rosebaugh v. Saffin, 10 Ohio 31, 532
Rosenbaum, In re, 6 N. Y. S. 184, 1186
v. City of Newbern, 118 N. C. 83, 600, 797, 1703
Roseboom v. Jefferson Tp., 122 Ind. 377, 626, 1479
Rosenthal v. Taylor R. Co., 79 Tex. 325, 1582
Rosetta Gravel &c. Co. v. Jollisaint, 51 La. An. 804, 1284, 1304
v. Kennedy, 51 La. An. 1535, 1754
Rosevere v. Borough of Osceola Mills, 169 Pa. St. 555, 1337
Rosewell v. Prior, 2 Salk. 460, 1095
Ross v. Brown, 74 Maine 352, 216
v. City of Madison, 1 Ind. 281, 261
v. City of Philadelphia, 115 Pa. St. 222, 710
v. Clinton, 46 Iowa 606, 1217
v. Stackhouse, 114 Ind. 200, 947, 1190, 1191, 1201, 1259
v. Williamson, 44 Ga. 501, 313
Rossire v. City of Boston, 4 Allen 57, 253
Rossiter v. City of Lake Forest, 157 Ill. 489, 1291, 1702
v. Peek, 3 Gray 538, 341
Rotenberry v. Board &c., 67 Miss. 470, 556
Roth v. House of Refuge, 31 Md. 329, 1071
Rothrock v. School District, 133 Pa. St. 487, 172
Rounds v. Mansfield, 38 Maine 586, 222, 311
v. Mumford, 2 R. I. 154, 517
v. Waymart, 81 Pa. St. 395, 106
Roundtree v. City of Galveston, 42 Tex. 612, 1207
Rouse v. Moore, 18 Johns. 407, 7
Rowe v. Portsmouth, 56 N. H. 291, 1208
Rowell v. City of Lowell, 7 Gray 100, 1601
v. Horton, 58 Vt. 1, 308
v. Town of Vershire, 62 Vt. 405, 1058
v. Tunbridge School Dist., 59 Vt. 658, 1480
Rowland v. Mayor &c., 83 N. Y. 372, 206
Rowlett v. Eubank, 1 Bush 477, 311
Rowning v. Goodchild, 2 W. Bl. 906, 222
Rowzer v. Pierce, 75 Miss. 846, 1698
Roy v. Eaton, Litt. 23, 130
Royal St., In re, 16 La. An. 393, 1257
Royce v. Salt Lake City, 15 Utah 401, 792
Royster v. Board &c., 98 N. C. 148, 957, 962
Rozell v. Andrews, 103 N. Y. 150, 1567
Rozier v. Francois Co., 34 Mo. 395, 981
Ruby v. Shain, 54 Mo. 207, 618
Rudderow v. City of Philadelphia, 166 Pa. St. 241, 1219
Rude v. City of St. Louis, 93 Mo. 408, 1697
Rudy v. School Dist., 30 Mo. App. 113, 1491
Rugby Charity v. Merryweather, 11 East 376, 1559
Ruggles v. Board of Trustees &c., 88 Cal. 430, 167
v. City of Fond du Lac, 53 Wis. 436, 247, 942, 1551

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Ruggles v. Collier, 43 Mo. 353, 281, 1539
v. Inhabitants &c., 11 Cush. 433, 281
v. Town of Nevada, 63 Iowa 185, 1618, 1626
Ruhland v. Supervisors, 55 Wis. 664, 344
Rummel v. New York &c. R. Co., 30 N. Y. St. 235, 1564
Rumsey v. City of Philadelphia, 171 Pa. St. 63, 793
v. People, 19 N. Y. 41, 64
Rumsly &c. Mfg. Co. v. Inhabitants &c., 21 Mo. App. 175, 464
Rund v. Town of Fowler, 142 Ind. 214, 600
Rundle v. Delaware &c. Canal Co., 1 Wall. Jr. 275, 4, 6
v. Mayor &c., 28 Md. 356, 1724
Runion v. Latimer, 6 S. C. 126, 197
Runkle v. Commonwealth, 113 Pa. St. 229, 1667
Runyan v. Coster, 14 Pet. 122, 1576
Ruohs v. Athens, 91 Tenn. 20, 408, 977
Rusher v. City of Dallas, 83 Tex. 151, 799
Rushton v. City of Alleghany, 192 Pa. St. 574, 1800
Rushville Gas Co. v. City of Rushville, 121 Ind. 206, 161, 162, 293, 298, 473, 474
Russell v. Cage, 66 Tex. 428, 552, 841, 892
v. City of Chicago, 22 Ill. 283, 168
v. City of New Haven, 51 Conn. 259, 1725
v. City of St. Louis, 9 Mo. 507, 1515
v. Dyer, 40 N. H. 173, 345
v. Hubbard, 59 Ill. 335, 1814
v. Inhabitants &c., 74 Mo. 480, 827, 1608, 1618, 1619, 1790
v. Mayor &c., 2 Denio 461, 673, 802, 1114
v. Men of Devon, 2 T. R. 667, 142, 776, 777, 1734
v. Tate, 52 Ark. 541, 212, 219, 623, 651, 919
v. Town of Monroe, 116 N. C. 720, 1317, 1329, 1331
v. Town of Steuben, 57 Ill. 35, 775
v. Turner, 62 Maine 496, 697
v. Village of Canastota, 98 N. Y. 496, 1587
v. Wellington, 157 Mass. 100, 471
v. Williamsport, 9 Pa. Co. Ct. 129, 173
Ruston v. Grimwood, 30 Ind. 364, 1570
Rutgers v. Mayor &c., 42 N. J. L. 51, 760
Rutherford v. City of Holly, 105 N. Y. 632, 1217
v. Davis, 95 Ind. 245, 1570
v. Hamilton, 97 Mo. 543, 274, 276
v. Swink, 90 Tenn. 152, 1422, 1423
v. Swink, 96 Tenn. 564, 525
v. Taylor, 38 Mo. 315, 629
Rutter v. Chapman, 8 M. & W. 1, 35, 77
Ruttle v. City of Covington, 10 Ky. L. 766, 1352
Rutz v. Kelm, 143 Ill. 558, 576
Ryan v. City of Central City, 21 Ky. L. 1070, 1554
v. City of Chicago, 79 Ill. App. 28, 1333
v. Copes, 11 Rich. 217, 1111
v. Dakota Co., 32 Minn. 138, 303
v. Martin, 91 N. C. 464, 650
v. Town of Sumner, 17 Wash. 228, 1243
v. United States, 86 U. S. 514, 327
Ryder v. City of Alton, 175 Ill. 94, 305, 512, 1173
v. Railroad Co., 13 Ill. 516, 86
Ryerson v. Brown, 35 Mich. 333, 685
v. Laketon Tp., 52 Mich. 509, 1532
Ryney v. City of Chicago, 102 Ill. 64, 1219

S

Sachs v. City of Sioux City, 109 Iowa 224, 1755
Sackett v. City of New Albany, 88 Ind. 473, 651, 889, 895
v. State, 74 Ind. 486, 274
Sadler v. Langham, 34 Ala. 311, 685, 687
Safety Insulated Wire &c. Co. v. City of Baltimore, 74 Fed. 363, 749
v. Mayor &c., 66 Fed. 140, 547
Sage v. City of Brooklyn, 89 N. Y. 189, 705
v. Laurain, 19 Mich. 137, 223, 225, 335
v. Town of Fifield, 68 Wis. 546, 652
Saginaw Gas &c. Co. v. City of Saginaw, 28 Fed. 529, 510, 566, 567, 1351, 1465
St. Charles v. Hackman, 133 Mo. 634, 727
St. Clair v. School Board's Appeal, 74 Pa. St. 252, 1721
St. Francis Co. v. Cummings, 55 Ark. 419, 1073
St. Helena W. Co. v. Forbes, 62 Cal. 182, 688
St. Helen's Mill Co., In re, 3 Sawy. 88, 1212
St. Joseph &c. Ins. Co. v. Leland, 90 Mo. 177, 222
St. Joseph &c. R. Co. v. Buchanan County Court, 39 Mo. 485, 369, 370
v. Linn Co. Court, 39 Mo. 485, 983
St. Joseph's Orphan Society v. Wolpert, 80 Ky. 86, 1063
St. Joseph School Board v. Gaylord, 86 Mo. 401, 1490
St. Joseph Tp. v. Rogers, 16 Wall. 644, 374, 473, 646, 983, 1005, 1018, 1027, 1150, 1407, 1792
St. Louis v. Babcock, 156 Mo. 154, 1407, 1792
v. Bentz, 11 Mo. 61, 607
v. Cafferata, 24 Mo. 94, 607
v. Ferry Co., 11 Wall. 423, 1499, 1500, 1502
v. Insurance Co., 12 R. I. 435, 1513
v. Western U. Tel. Co., 148 U. S. 92, 510
St. Louis Bridge Co. v. City of East St. Louis, 121 Ill. 238, 1500, 1514
St. Louis Co. Court v. Griswold, 58 Mo. 175, 688
St. Louis Gaslight Co. v. City of St. Louis, 46 Mo. 121, 1451, 1518
St. Louis Public Schools v. City of St. Louis, 26 Mo. 468, 1247
St. Louis &c. R. Co. v. Anderson, 39 Ark. 167, 701
v. Bell, 81 Ill. 76, 794
v. Capps, 67 Ill. 607, 1602
v. Weaver, 35 Kan. 412, 1628
St. Mary's Indust. School v. Brown, 45 Md. 310, 549, 654
St. Paul Gaslight Co. v. City of St. Paul, 78 Minn. 39, 721, 737
St. Paul &c. R. Co. v. City of Minneapolis, 35 Minn. 141, 679
v. City of St. Paul, 21 Minn. 256, 1247
St. Peter v. Denison, 58 N. Y. 416, 823
St. Vincent Orphan Asylum v. City of Troy, 76 N. Y. 108, 1106
Sale v. Aurora &c. Tpk. Co., 147 Ind. 324, 1639

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Salem Tpk. &c. Co. v. Essex Co., 100 Mass. 282, 1514, 1519
Salem Water Co. v. City of Salem, 5 Or. 29, 848, 877, 881
Saleno v. City of Neosho, 127 Mo. 627, 479, 877
Salisbury v. Hershenroder, 106 Mass. 458, 1612
v. Merrimack Co., 59 N. H. 359, 1055
Salmon v. Haynes, 50 N. J. L. 97, 160, 285, 286
Saloman v. United States, 19 Wall. 17, 743
Saloy v. City of New Orleans, 33 La. An. 79, 651
Salscheider v. City of Fort Howard, 45 Wis. 519, 1720
Saltenberry v. Loucks, 8 La. An. 95, 333
Salt Lake City v. Hollister, 118 U. S. 256, 616, 812
Samis v. King, 40 Conn. 298, 169, 213, 1427, 1430
Sam Kee, In re, 31 Fed. 680, 1082
Sample v. Davis, 4 Greene 117, 328
Samples v. City of Atlanta, 95 Ga. 110, 1328
San Antonio v. Barnes, 96 U. S. 316, 1001
v. Berry, 48 S. W. 496, 1293
v. Lewis, 9 Tex. 69, 261
v. Lewis, 15 Tex. 388, 629
v. Mehaffy, 96 U. S. 312, 1001, 1014
San Antonio &c. R. Co. v. Bergsland, 12 Tex. Civ. App. 97, 1350
San Antonio St. R. Co. v. City of San Antonio, 22 Tex. Civ. App. 341, 1558
Sanborn v. Machiasport, 53 Maine 82, 347
v. Neal, 4 Minn. 126, 217
v. School Dist., 12 Minn. 17, 302, 343, 348, 357, 1480
v. Town of Deerfield, 2 N. H. 251, 868
Sanders v. Inhabitants &c., 154 Mass. 475, 1584
v. Southern &c. R. Co., 147 Mo. 411, 1385
v. Town Com'rs, 30 Ga. 679, 1388, 1503, 1533
Sanderson v. Aston, L. R. 8 Ex. 73, 320
San Diego Inv. Co. v. Shaw, 129 Cal. 273, 1272
San Diego Water Co. v. City of San Diego, 59 Cal. 517, 644
Sands v. City of Richmond, 31 Gratt. 571, 1198
v. Manistee &c. Co., 123 U. S. 288, 1576
Sanford v. Inhabitants &c., 32 Maine 536, 776
v. Mayor &c., 52 Miss. 383, 1560
v. Prentice, 28 Wis. 358, 356, 374, 1150
San Francisco v. Spring Valley Water-Works, 48 Cal. 493, 55
San Francisco &c. Co. v. City of San Francisco, 6 Cal. 190, 464, 465
San Francisco &c. Factory v. Brickwedel, 60 Cal. 166, 506
San Francisco Gas Co. v. Brickwedel, 62 Cal. 641, 920
v. City of San Francisco, 9 Cal. 453, 649, 714, 746, 756
San Francisco &c. R. Co. v. City of Oakland, 43 Cal. 502, 553
Sangamon &c. R. Co. v. Morgan Co., 14 Ill. 163, 1499
Sanger v. City of Waco, 15 Tex. Civ. App. 424, 1746
Sanger v. Commissioners, 25 Maine 291, 339, 1681
v. Craigue, 10 Vt. 555, 228
Sangster v. Commonwealth, 17 Gratt. 124, 330, 332
Sanitary Dist. &c. v. Geo. F. Blake Mfg. Co., 179 Ill. 167, 742, 743, 748, 1756
v. McGuirl, 86 Ill. App. 392, 1773
v. Ricker, 91 Fed. 833, 717, 754
Sanitary Reduction Works v. California &c. Co., 94 Fed. 693, 1393
San Jose Gas Co. v. January, 57 Cal. 614, 1689
Sank v. City of Philadelphia, 4 Brews. 133, 304, 1133
San Luis Obispo Co. v. Hendricks, 71 Cal. 242, 472, 488
v. White, 91 Cal. 432, 368
San Mateo Co. v. Southern &c. R. Co., 13 Fed. 722, 139
Sansbury v. Middleton, 11 Md. 296, 168
Sansom v. Mercer, 68 Tex. 488, 421
Santa Ana Water Co. v. Town of Buenaventura, 65 Fed. 323, 186, 715, 730
v. Town of San Buenaventura, 56 Fed. 339, 672
Santa Cruz &c. Co. v. Broderick, 113 Cal. 628, 711, 714, 1155
v. Heaton, 105 Cal. 162, 1155
Santa Rosa City R. Co. v. Central St. R. Co., 38 Pac. 986, 479
Santo v. State, 2 Iowa 165, 520
Sargent v. City of Evanston, 154 Ill. 368, 1146
v. City of Lynn, 138 Mass. 599, 1624
v. Cornish, 54 N. H. 18, 564, 664, 665
v. Gorman, 131 N. Y. 191, 1647
v. Webster, 13 Met. 497, 274
Sarles v. Mayor &c., 47 Barb. 447, 800
Sarpy v. Municipality No. Two, 9 La. An. 597, 1214
Satterfield v. People, 104 Ill. 448, 328
Satterlee v. City of San Francisco, 23 Cal. 314, 631
v. Mathewson, 16 S. & R. 169, 1160
v. Matthewson, 2 Peters 380, 992
v. Strider, 31 W. Va. 789, 1651
Sauer v. Mayor &c., 41 N. Y. S. 957, 1779
v. Mayor &c., 60 N. Y. S. 648, 1772, 1775
Sauerhering v. Iron Bridge &c. R. Co., 25 Wis. 447, 987
Saulsbury v. Village of Ithaca, 94 N. Y. 27, 821, 1587, 1614
Sault Ste. Marie High Com'rs v. Van Duson, 40 Mich. 429, 868
Saunders v. City of Ft. Madison, 111 Iowa 102, 818
v. Haynes, 13 Cal. 145, 378
v. Lawrence, 141 Mass. 380, 160
v. Nashua, 69 N. H. 492, 519
v. Provisional Municipality &c., 24 Fla. 226, 390
v. Taylor, 9 B. & C. 35, 321
v. Townsend, 26 Hun 308, 1556
Saunderson v. Herman, 95 Wis. 48, 1295
Sauntman v. Maxwell, 154 Ind. 114, 1142, 1173
Savage v. City of Buffalo, 14 N. Y. S. 101, 1254
Savannah &c. R. Co. v. Mayor &c., 45 Ga. 602, 591
Savidge v. Supervisors &c., 10 Wis. 49, 959
v. Village of Spring Lake, 112 Mich. 91, 874, 1699
Saving & Loan Soc. v. Austin, 46 Cal. 415, 1717

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Saving Society v. Philadelphia, 31 Pa. St. 175, 491
Savings Ass'n v. Topeka, 3 Dillon 376, 55
Savings Bank v. City of Nashua, 46 N. H. 389, 1501
v. Davis, 8 Conn. 191, 260, 277
v. Inhabitants &c., 8 Allen 109, 252
v. Ward, 100 U. S. 195, 228
Sawyer v. City of Chicago, 183 Ill. 57, 512, 736, 1553
v. City of San Francisco, 50 Cal. 370, 630
v. Corse, 17 Gratt. 230, 222, 265
v. Manchester &c. R. Co., 62 N. H. 135, 362
v. State Board &c., 125 Mass. 182, 468, 552
Saxton v. Beach, 50 Mo. 488, 286
v. City of Peoria, 75 Ill. App. 397, 1386
v. City of St. Joseph, 60 Mo. 153, 286
v. Nimms, 14 Mass. 315, 348, 365
Saylor v. City of Montesano, 11 Wash. 328, 1334, 1346, 1361
Sayre v. Borough of Phillips, 148 Pa. St. 482, 1404
v. Mayor &c., 60 N. J. Eq. 361, 593, 1378
v. Tompkins, 23 Mo. 443, 1288, 1474, 1722
Scadding v. Lorant, 5 Eng. L. & Eq. 16, 274, 289
Scaine v. Inhabitants &c., 39 N. J. L. 526, 454
Scales v. Ordinary &c., 41 Ga. 225, 12, 775
Scalf v. Collins Co., 80 Tex. 514, 577
Scammon v. City of Chicago, 40 Ill. 146, 1533
v. City of Chicago, 44 Ill. 269, 1536
v. Scammon, 28 N. H. 419, 187, 346
Scanlan v. City of Watertown, 43 N. Y. S. 618, 1325
v. Wright, 13 Pick. 523, 134
Scarling v. Criett, Moo. 75, 467
Schaeffer v. Jackson Tp., 150 Pa. St. 145, 1332, 1600
v. Bonham, 95 Ill. 368, 1023
Schaff v. Upper Connecticut &c. Co., 57 N. H. 110, 1571
Schaffer v. Cadwallader, 36 Pa. St. 126, 457
Schaller v. City of Omaha, 23 Neb. 325, 678
Scheerer v. Edgar, 76 Cal. 569, 953
Schefbauer v. Board &c., 57 N. J. L. 588, 747
Scheftels v. Tabert, 46 Wis. 439, 524
Schell v. Stein, 76 Pa. St. 398, 229
Schenck v. Peay, 1 Dill. 267, 1540
v. Peay, 1 Woolw. 175, 287, 295
Schenectady &c. Co. v. Thatcher, 11 N. Y. 102, 994
Schenley v. Commonwealth, 36 Pa. St. 29, 282, 547, 1160, 1232, 1233, 1539
Schermerhorn v. City of Schenectady, 3 N. Y. S. 435, 177
Schettler v. City of Ford Howard, 43 Wis. 48, 1550
Schipper v. City of Aurora, 121 Ind. 154, 746
Schively v. Borough of Jenkintown, 180 Pa. St. 196, 1360
Schlachter v. Stokes, 63 N. J. L. 138, 599
Schloss v. White, 16 Cal. 65, 333
Schmidt, Ex parte, 24 S. C. 363, 1413
v. Kansas City Dist. Co., 90 Mo. 284, 795
Schmidt v. Stearns Co., 34 Minn. 112, 715
Schmitt v. City of New Orleans, 48 La. An. 1440, 1155, 1162
Schneck v. City of Jeffersonville, 152 Ind. 204, 981, 993, 1030
Schneider, Ex parte, 11 Or. 288, 1389
Schoen v. City of Atlanta, 97 Ga. 697, 1392
Schoff v. Gould, 52 N. H. 512, 346, 348, 367
v. Town of Bloomfield, 8 Vt. 472, 349
Schofield v. Eighth School Dist., 27 Conn. 499, 1730
School v. Williams, 38 Ark. 454, 12
Schoolbred v. Corporation of Charleston, 2 Bay 63, 1529
School Com'rs v. Dean, 2 St. & P. 190, 50
School Directors v. Crews, 23 Ill. App. 367, 1491
v. Ewington, 26 Ill. App. 379, 1492
v. Jennings, 10 Ill. App. 643, 1485
v. McBride, 22 Pa. St. 215, 1480
v. School Directors, 105 Ill. 653, 443
v. School Directors &c., 135 Ill. 464, 1473
v. Sippy, 54 Ill. 287, 864
v. Vogelman, 76 Ill. 189, 864
School Dist. v. Atherton, 12 Met. 105, 168, 367
v. Bennett, 52 Ark. 511, 1476, 1480
v. Board &c., 73 Mo. 627, 1519
v. Board &c., 9 Neb. 405, 1670
v. Bodenhamer, 43 Ark. 140, 1471
v. Bragdon, 23 N. H. 507, 348, 367
v. Carr, 55 N. H. 452, 1485
v. Carr, 63 N. H. 201, 193
v. Clark, 90 Mich. 435, 850, 1029, 1426
v. Cushing, 8 Kan. App. 728, 1033
v. Deshon, 51 Maine 454, 1483
v. Driver, 50 Ark. 346, 1489
v. Everett, 52 Mich. 314, 1490
v. First National Bank, 19 Neb. 89, 1014, 1015
v. Fuess, 98 Pa. St. 600, 1035
v. Gage, 39 Mich. 484, 1745
v. Greenfield, 64 N. H. 84, 1474
v. Howe, 62 Ark. 481, 1504
v. Insurance Co., 101 U. S. 472, 54
v. Insurance Co., 103 U. S. 707, 55
v. Jant Board &c., 27 Mich. 3, 1724
v. Lombard, 2 Dill. 493, 941, 952
v. Lord, 44 Maine 374, 340, 366, 1429, 1485
v. Macloon, 4 Wis. 98, 1471
v. Maury, 53 Ark. 471, 1492
v. Prentiss, 66 N. H. 145, 1487
v. Randall, 7 Cush. 478, 1483
v. Riverside Tp., 67 Mich. 404, 1483
v. Roach, 41 Kan. 531, 1472
v. Roach, 43 Minn. 495, 1482
v. Root, 61 Mich. 373, 1486
v. School Dist., 20 Kan. 76, 1473
v. School Dist. &c., 63 Mich. 51, 658, 1471, 1473, 1474
v. School Dist., 94 Mo. 612, 1485
v. Selectmen, 63 N. H. 277, 1495
v. State, 29 Kan. 57, 66, 69, 70
v. Stone, 106 U. S. 183, 863, 1007, 1012
v. Sullivan, 48 Kan. 624, 618
v. Tebbetts, 67 Maine 239, 1483
v. Thelander, 31 Minn. 333, 1483
v. Thompson, 5 Minn. 280, 1471
v. Town of Bridport, 63 Vt. 383, 1475, 1487
v. Twitchell, 63 N. H. 11, 1487
v. Union School Dist., 81 Mich. 339, 1473

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

School Dist. v. Wickersham, 34 Mo. App. 337, 1489
Schoolfield v. City of Lynchburg, 78 Va. 366, 1520
School Fund, In re, 15 Neb. 684, 913
Schools v. Risley, 10 Wall. 91, 579
School Town of Milford v. Powner, 126 Ind. 528, 285, 1491
v. Zeigler, 1 Ind. App. 138, 285, 853, 1491, 1492
School Town of Monticello v. Kendall, 72 Ind. 91, 217
School Tp. &c. v. School Town &c., 109 Ind. 559, 445
Schopp v. City of St. Louis, 117 Mo. 131, 1698
Schott v. People, 89 Ill. 195, 540
Schriber v. Town of Langlade, 66 Wis. 616, 447
Schroder v. Overman, 61 Ohio St. 1, 1272, 1285
Schroeder v. City Council, 2 Treadw. Const. 726, 1400
v. City of Baraboo, 93 Wis. 95, 1377
Schroth v. City of Prescott, 68 Wis. 678, 1617
Schroyer v. Lynch, 8 Watts 453, 225, 226
Schuett v. City of Stillwater, 80 Minn. 287, 791
Schulenberg &c. Co. v. City of East St. Louis, 63 Ill. App. 214, 219, 796, 1505
v. St. Louis &c. R. Co., 129 Mo. 455, 1697
Schultz v. Cambridge, 38 Ohio St. 659, 517
v. City of Albany, 57 N. Y. S. 965, 1304, 1707
v. City of Milwaukee, 49 Wis. 254, 264
Schumm v. Seymour, 24 N. J. Eq. 143, 210, 279, 645
Schuyler Co. v. Mercer Co., 9 Ill. 20, 1668
v. Thomas, 98 U. S. 169, 995, 1001
Schwartz v. Barry, 90 Mich. 267, 910
v. City of Oshkosh, 55 Wis. 490, 483, 541, 1421
v. Thirty-two Flatboats, 14 La. An. 243, 1539
v. Wilson, 75 Cal. 502, 886, 920
Schwiesau v. Mahon, 128 Cal. 114, 1153
Schwingschlegle v. City of Monroe, 113 Mich. 683, 1328, 1803
Schwuchow v. City of Chicago, 68 Ill. 444, 598
Scofield v. City of Council Bluffs, 68 Iowa 695, 648, 1306
v. City of Lansing, 17 Mich. 437, 282
Scoles v. Wilsey, 11 Iowa 261, 229
Scollans v. Rollins, 173 Mass. 275, 1013
Scotland Co. v. Hill, 132 U. S. 107, 995, 1026
v. Thomas, 94 U. S. 682, 995, 1001
Scotland Co. Court v. United States, 140 U. S. 41, 1534
Scott v. Chickasaw Co., 53 Iowa 47, 1550, 1727
v. City of Davenport, 34 Iowa 208, 890, 893
v. City of New Orleans, 75 Fed. 373, 1331
v. City of Shreveport, 20 Fed. 714, 644
v. City of Toledo, 36 Fed. 385, 558, 674
v. Paulen, 15 Kan. 162, 276, 277
v. State, 46 Ind. 203, 328
v. Union Co., 63 Iowa 583, 276
Scott Co. v. Hinds, 50 Minn. 204, 569, 1271
Scotten v. City of Detroit, 106 Mich. 564, 1303
Scovill v. City of Cleveland, 1 Ohio St. 126, 90, 103, 288, 1232, 1253
Scoville v. Mattoon, 55 Conn. 144, 1473, 1474
v. Salt Lake City, 11 Utah 60, 1337, 1343
Scranton v. Levers, 9 Pa. Dist. R. 176, 1506
Scranton City v. Kingsbury, 4 Pa. Dist. Rep. 555, 1297
Scripture v. Burns, 59 Iowa 70, 1655
Scudder v. Mayor &c., 146 N. Y. 245, 1704
v. Trenton &c. Co., 1 N. J. Eq. 694, 685, 698
Scully v. O'Leary, 11 Chicago Legal News 27, 1414
Seaboard Nat'l Bank v. Woesten, 147 Mo. 467, 469, 712, 717, 737, 752, 1289
Seabury v. Howland, 15 R. I. 446, 346, 362, 365, 1477, 1485
Seagraves v. City of Alton, 13 Ill. 366, 241, 1041, 1084
Seaman v. Baughman, 82 Iowa 216, 364, 849
v. Hicks, 8 Paige 655, 687
v. Mayor &c., 80 N. Y. 239, 1373, 1557
v. Patten, 2 Caines 312, 1091
Searing v. Heavysides, 106 Ill. 85, 1699, 1722
Searle v. Abraham, 73 Iowa 507, 897, 1462
Searles v. Manhattan R. Co., 101 N. Y. 661, 1600
Sears v. Board &c., 173 Mass. 71, 1271, 1291, 1292, 1310
v. Inhabitants &c., 105 Mass. 310, 1601
v. Street Com'rs &c., 173 Mass. 350, 1271, 1300, 1378, 1506
v. Street Com'rs &c., 173 Mass. 876, 1299
Seaver v. City of Seattle, 17 Wash. 361, 1758
Sebastian v. Bryan, 21 Ark. 447, 322, 327
Secombe v. Railroad Co., 23 Wall. 108, 694
Second Cong. Church Soc. &c. v. City of Omaha, 35 Neb. 103, 587
Second St. R. Co. v. City of Philadelphia, 51 Pa. St. 465, 1503
Second Ward Sav. Bank v. City of Huron, 80 Fed. 660, 1007, 1021, 1029
Secrist v. Delaware Com'rs, 100 Ind. 59, 1191
Seebold v. Shitler, 34 Pa. St. 133, 629
Seeger v. Mueller, 133 Ill. 86, 627, 648, 1759
Seeley v. City of Pittsburg, 82 Pa. St. 360, 1195, 1254, 1271, 1499
v. Peters, 5 Gilm. 130, 607
v. Town of Westport, 47 Conn. 294, 1263
Seely v. Sebastian, 4 Or. 25, 689
Seibert v. Botts, 57 Mo. 430, 628
Seibold v. People, 86 Ill. 33, 110
Seibrecht v. City of New Orleans, 12 La. An. 496, 233, 254, 260, 647
Seifert v. City of Brooklyn, 101 N. Y. 136, 263, 787, 790
v. City of Brooklyn, 15 Abb. N. C. 97, 822
Seitzinger v. Borough of Tamaqua, 187 Pa. St. 539, 751
v. Steinberger, 12 Pa. St. 379, 1417
Selby v. City of Portland, 14 Or. 243, 1433, 1445

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Selby v. Levee Com'rs, 14 La. An. 434, 1520
Seligman v. City of Santa Rosa, 81 Fed. 524, 1699
Selleck v. City of Janesville, 104 Wis. 570, 1798
Selma &c. R. Co., Ex parte, 45 Ala. 696, 983
v. Camp, 45 Ga. 180, 704
Selpho v. City of Brooklyn, 39 N. Y. S. 520, 754
Seneca Co. Supervisors v. Allen, 99 N. Y. 532, 904
Senhenn v. City of Evansville, 140 Ind. 675, 1361, 1362
Serrill v. City of Philadelphia, 38 Pa. St. 355, 386, 1513, 1516
Sessions v. Crunkilton, 20 Ohio St. 349, 689, 1084
Severin v. Cole, 38 Iowa 463, 693
Severy v. Nickerson Co., 120 Mass. 306, 810
Sewall v. Brainard, 38 Vt. 364, 1019
v. City of St. Paul, 20 Minn. 511, 1202, 1254
Seward v. City of Rising Sun, 79 Ind. 351, 1500
v. Rheiner, 2 Kan. App. 95, 1130, 1759
Sewell v. City of Cohoes, 75 N. Y. 45, 1596, 1627
Sexton v. Cook Co., 114 Ill. 174, 619
v. Pepper, 28 Hun 31, 1552
Seymer v. Town of Lake, 66 Wis. 651, 1641
Seymore v. Carter, 2 Met. 520, 1159
Seymour v. School Dist., 53 Conn. 502, 1745
v. Van Slyck, 8 Wend. 403, 771
Shadrock v. Columbus, 51 Ohio St. 317, 1268
Shafer v. Mumma, 17 Md. 331, 189, 192, 541, 607, 1085, 1414
Shaffer v. Welch, 34 Kan. 595, 1258
Shakespear v. Smith, 77 Cal. 638, 968, 1482
Shaller v. City of Omaha, 23 Neb. 325, 1222
Shanewerk v. City of Fort Worth, 11 Tex. Civ. App. 271, 798
Shanfelter v. Mayor &c., 80 Md. 483, 541
Shankland v. Phillips, 3 Tenn. Ch. 556, 1480
Shanks v. Dupont, 3 Peters 242, 132
Shannon v. City of Huron, 9 S. D. 356, 872, 878, 956
v. O'Boyle, 51 Ind. 565, 629
v. Portland, 38 Or. 382, 751, 1131, 1259
v. Portsmouth, 54 N. H. 183, 626
v. Reynolds, 78 Ga. 760, 950
v. Town of Tama City, 74 Iowa 22, 1596
v. Village of Hinsdale, 180 Ill. 18, 1148, 1153, 1166
Shapleigh v. City of San Angelo, 167 U. S. 646, 66, 71, 737, 1029
Sharp, In re, 56 N. Y. 257, 1257
v. Contra Costa Co., 34 Cal. 284, 774, 1522, 1743
v. Dunavan, 17 B. Mon. 223, 1515, 1517
v. Johnson, 4 Hill 92, 1261, 1533
v. Mayor &c., 40 Barb. 256, 870
v. Smith, 32 Ill. App. 336, 915
v. Spier, 4 Hill 76, 341, 565, 1134, 1232, 1533
Sharpe v. Robertson, 5 Gratt. 518, 183
Sharpless v. Mayor &c., 21 Pa. St. 147, 81, 763, 979, 983, 1536, 1538
Shaver v. Starrett, 4 Ohio St. 494, 687
Shaw v. Crocker, 42 Cal. 435, 680
Shaw v. Dennis, 10 Ill. 405, 763, 983, 1084, 1252, 1514
v. Independent School Dist. &c., 77 Fed. 277, 1030
v. Kennedy, N. C. Term R. 158, 533
v. Mayor &c., 19 Ga. 468, 212
v. Norfolk R. Co., 5 Gray 162, 992
v. President &c., 74 Wis. 105, 1618
v. Reed, 16 Mass. 450, 335
v. Statler, 74 Cal. 258, 886, 920
Shay, In re, 15 N. Y. S. 488, 1680
Shea v. City of Muncie, 148 Ind. 14, 490, 501, 843, 1383
v. Inhabitants &c., 145 Mass. 525, 711, 1037
v. Inhabitants, 145 Mass. 528, 280
Sheehan's Case, 122 Mass. 445, 1420
v. Gleeson, 46 Mo. 100, 282
v. Good Samaritan's Hospital, 50 Mo. 155, 1206, 1247, 1513
v. Martin, 10 Mo. App. 285, 1199
v. Owen, 82 Mo. 458, 1131
v. Sturges, 53 Conn. 481, 1493
Sheehy v. City of New York, 160 N. Y. 139, 930
v. Clausen, 55 N. Y. S. 1000, 1346
v. Kansas City &c. R. Co., 94 Mo. 574, 678, 1602, 1776
Sheel v. City of Appleton, 49 Wis. 125, 828, 942, 1615
Sheehan v. Mayor &c., 4 N. J. L. J. 92, 872
Sheets v. Selden's Lessee, 2 Wall. 177, 346
Sheffield v. Watson, 3 Cal. 69, 216
Sheffield School Tp. v. Andress, 56 Ind. 157, 260, 863, 971
Sheldley v. Lynch, 95 Mo. 487, 916
Shelby v. Alcorn, 36 Miss. 273, 195
Shelby Co. Court v. Cumberland &c. R. Co., 8 Bush 209, 996
Sheldon v. City of Asheville, 119 N. C. 606, 1785
v. Litchfield Co., 1 Root 158, 1735
v. Village of Kalamazoo, 24 Mich. 383, 1726
Sheley v. City of Detroit, 45 Mich. 431, 1233, 1268
Shellabarger v. Binns, 18 Kan. 345, 316
Shelley v. St. Charles Co., 30 Fed. 603, 1522
Shellhouse v. State, 110 Ind. 509, 1566
Shelton v. Borough of Birmingham, 61 Conn. 518, 1221
v. Mayor &c., 30 Ala. 540, 520
v. Platt, 139 U. S. 591, 1697
v. Town of Derby, 27 Conn. 414, 693, 1571
Shenandoah Borough v. Erdman, 12 Atl. 814, 1639
Shepard v. Tulare Irr. Dist., 94 Fed. 1, 1644, 1755, 1784
Shepardson v. Milwaukee &c. R. Co., 6 Wis. 605, 705
v. Supervisors &c., 28 Wis. 593, 1702
Shepherd v. Burkhalter, 13 Ga. 443, 228
v. District Tp., 25 Iowa 595, 952
v. Lincoln, 17 Wend. 250, 222, 226
v. Staten, 5 Helsk. 79, 197
Sheppard v. Pulaski Co., 13 Ky. L. 672, 803
Sherbourne v. Yuba Co., 21 Cal. 113, 9, 797
Sheridan v. City of Salem, 148 Mass. 196, 1179
v. City of Salem, 14 Or. 328, 89, 116, 936, 1594
v. Colvin, 78 Ill. 237, 591, 845, 1697
v. Mayor &c., 33 N. Y. S. 71, 793
Sherley v. City of Louisville, 21 Ky. L. 945, 1543
Sherlock v. Alling, 93 U. S. 99, 1333

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Sherlock v. Kansas City &c. Co., 142 Mo. 172, 1697
Sherman v. Board &c., 84 Mich. 108, 1646
v. Buick, 32 Cal. 241, 687
v. Carr, 8 R. I. 431, 663, 667
v. Milwaukee &c. R. Co., 40 Wis. 645, 682
v. Peterson, 91 Mich. 480, 1568
v. Torrey, 99 Mass. 472, 362
Sherman Co. v. Simons, 109 U. S. 735, 13, 998, 1005, 1009, 1011, 1024
Sherry v. Gilmore, 58 Wis. 324, 49
Sherwin v. Bugbee, 16 Vt. 439, 86, 87, 343, 349, 355, 1475
v. Bugbee, 17 Vt. 337, 344, 353, 1485
Sherwood v. City of Lafayette, 109 Ind. 411, 693, 1571
v. St. Paul &c. R. Co., 21 Minn. 127, 1571
Shields v. Chase, 32 La. An. 409, 1528
v. McGregor, 91 Mo. 534, 155
v. Ohio, 95 U. S. 319, 510
v. Town of Durham, 118 N. C. 450, 805, 1784
Shietart v. City of Detroit, 108 Mich. 309, 1316
Shiflett v. City of Cedartown, 111 Ga. 834, 1801
Shilas v. Olinger, 50 Iowa 571, 1387
Shiloh St., In re, 165 Pa. St. 386, 1152
Shimmons v. City of Saginaw, 104 Mich. 511, 1705
Shinbone v. Randoph Co., 56 Ala. 183, 1527, 1528
Shinners v. Proprietors &c., 154 Mass. 168, 1627
Shipley v. Baltimore &c. R. Co., 34 Md. 336, 704, 705
v. Hackeney, 34 Or. 303, 931, 953
v. Mechanics' Bank, 10 Johns. 484, 1674
Shipman v. State, 42 Wis. 377, 233
Shippy v. Mason, 90 Mich. 45, 949
v. Village of Au Sable, 65 Mich. 494, 1586
Shirk v. Pulaski Co., 4 Dill. 209, 941, 944
Shock v. City of St. Louis, 85 Ill. 377, 1111
Shoemaker v. United States, 147 U. S. 282, 1302
Sholl v. German Coal Co., 118 Ill. 427, 685
Shontz v. Evans, 40 Iowa 139, 1540
Shook v. City of Cohoes, 108 N. Y. 648, 1608, 1631
Short v. Symmes, 150 Mass. 298, 198
Shorter v. Mayor &c., 52 Ga. 621, 1001
Shrader, Ex parte, 33 Cal. 279, 1079, 1081
Shreve v. Town of Cicero, 129 Ill. 226, 1174, 1261
Shriver v. Pittsburg, 66 Pa. St. 446, 1500, 1508
Shuck v. City of Lebanon, 21 Ky. L. 969, 1554, 1784
Shue v. Highway Com'rs, 41 Mich. 638, 697
Shuetze v. Bailey, 40 Mo. 69, 217
Shulz v. City of Albany, 59 N. Y. S. 235, 1281, 1732
Shuman v. City of Fort Wayne, 127 Ind. 109, 603, 604
Shumway v. City of Burlington, 108 Iowa 424, 1798, 1802
Sias v. Village of Reed City, 103 Mich. 312, 1328, 1803
Sibbald v. Buckell, 36 Atl. 1032, 157
Sibley v. City of Mobile, 3 Woods 535, 1523, 1528
Sidener v. Essex, 22 Ind. 201, 701
Sides v. Portsmouth, 59 N. H. 24, 1608
Sidner v. Alexander, 31 Ohio St. 378, 323
Siefert v. City of Brooklyn, 101 N. Y. 136, 1180
Sievers v. City of San Francisco, 115 Cal. 648, 788, 792
Sights v. Yarnalls, 12 Gratt. 292, 1507
Sikes v. Hatfield, 13 Gray 347, 281
v. Town of Manchester, 59 Iowa 65, 1615
Sill v. Village of Corning, 15 N. Y. 297, 440
Silliman v. Fredericksburg &c. R. Co., 27 Gratt. 119, 217
Silsbee v. Stockle, 44 Mich. 561, 1536
Silver v. Cummings, 7 Wend. 181, 193
v. People, 45 Ill. 224, 1680
Silver Lake Bank v. North, 4 Johns. Ch. 370, 239, 649
Silvey v. Boyle, 20 Utah 205, 201
Simar v. Canaday, 53 N. Y. 298, 693
Simis v. Brookfield, 34 N. Y. S. 695, 1370
Simmer v. St. Paul, 23 Minn. 408, 8
Simmerman v. Borough of Wildwood, 60 N. J. L. 367, 477
Simmes v. Chicot Co., 50 Ark. 566, 944
Simmons v. City of Camden, 26 Ark. 276, 680
v. City of Toledo, 5 Ohio C. C. 124, 654
v. State, 12 Mo. 268, 1508
Simms v. City of Paris, 8 Ky. L. 344, 1516
v. Kern, 92 Pa. St. 455, 1124
Simon v. Northrup, 27 Or. 487, 1147, 1315
Simonds v. Heard, 23 Pick. 120, 216
v. Parker, 1 Met. 508, 1740
Simons v. City of Camden, 29 Ark. 276, 1776
Sims v. Board &c., 39 Ind. 40, 1095
v. City of Frankfort, 79 Ind. 446, 585, 1322
v. Hines, 121 Ind. 534, 707
Singer Mfg. Co. v. City of Elizabeth, 42 N. J. L. 249, 1017
Single v. Marathon Co., 38 Wis. 364, 994
Sinnatt v. Chicago &c. R. Co., 81 Wis. 95, 589
Sinnett v. Moles, 38 Iowa 25, 556
Sinton v. Asbury, 41 Cal. 525, 1317, 1522
Sioux City &c. Co. v. Trust Co. &c., 27 C. C. A. 73, 1758
Sioux City R. Co. v. Sioux City, 138 U. S. 98, 104, 510
Sipe v. Murphy, 49 Ohio St. 536, 1398
Skaggs v. City of Martinsville, 140 Ind. 476, 501
Skaneateles W. W. Co. v. Village of Skaneateles, 161 N. Y. 154, 1349, 1814
Skillman v. Board &c., 64 N. J. L. 489, 1765
Skinker v. Herman, 2 Mo. App. Repr. 1095, 502, 1293, 1701
Slack v. Blackburn, 64 Iowa 373, 988
v. Maysville &c. R. Co., 13 B. Mon. 1, 983
v. Town of Norwich, 32 Vt. 818, 1726
Slater v. Wood, 9 Bosw. 15, 189, 191
Slatten v. Des Moines &c. R. Co., 29 Iowa 148, 1108
Slattery, Ex parte, 3 Ark. 484, 1411, 1415
Slaughter v. Commonwealth, 13 Gratt. 767, 137, 1508, 1521
v. Mobile Co., 73 Ala. 134, 412
v. O'Berry, 126 N. C. 181, 517, 612
v. People, 2 Doug. 334, 497, 1414

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Slaughterhouse Cases, 16 Wall. 36, 1403
Slee v. Bloom, 5 Johns. Ch. 366, 167
Sleeper v. Bullen, 6 Kan. 300, 1723
v. Sandown, 52 N. H. 244, 1640
Sleight v. People, 74 Ill. 47, 1538
Slessman v. Crozier, 80 Ind. 487, 532
Slevin v. Board &c., 123 Cal. 130, 1765
Slingerland v. International Cont. Co., 43 App. Div. 215, 1773
Sloan v. Beebe, 24 Kan. 343, 1234
v. State, 8 Blackf. 361, 75, 76, 103
Slocomb v. City of Fayetteville, 125 N. C. 362, 1506
Small v. Inhabitants &c., 51 Maine 359, 459, 756
v. Orme, 79 Maine 78, 160, 298
v. Town of Prentice, 102 Wis. 256, 930, 1799
Smally v. City of Appleton, 75 Wis. 18, 1587, 1622
Smathers v. Commissioners, 125 N. C. 480, 986
Smead v. Indianapolis &c. R. Co., 11 Ind. 104, 251
Smedley v. Irwin, 51 Pa. St. 445, 685
v. Kirby, 120 Mich. 253, 192
Smeltzer v. White, 92 U. S. 390, 959
Smiley v. MacDonald, 42 Neb. 5, 740
Smith, Ex parte, 38 Cal. 702, 1079, 1399
Smith, In re, 99 N. Y. 424, 1158, 1234
v. Aston, Freem. Ch. 308, 1014
v. Bangs, 15 Ill. 399, 401
v. Birmingham W. Co., 104 Ala. 315, 1708
v. Board &c., 45 Fed. 725, 86, 93, 94, 153, 156, 343, 368
v. Board &c., 46 Fed. 340, 774
v. Board &c., 59 Ill. 412, 318
v. Board &c., 148 N. Y. 187, 1829
v. Bradley, 20 N. H. 117, 1569
v. Chicago, 38 Fed. 388, 1604
v. City of Appleton, 19 Wis. 468, 1531
v. City of Boston, 7 Cush. 254, 1575
v. City of Brooklyn, 46 N. Y. S. 141, 1370
v. City of Buffalo, 35 N. Y. S. 635, 1160
v. City of Buffalo, 159 N. Y. 427, 1244, 1298, 1311
v. City of Buffalo, 1 Sheld. 493, 1133
v. City of Chicago, 169 Ill. 257, 1147
v. City of Des Moines, 106 Iowa 590, 1260, 1301
v. City of Detroit, 120 Mich. 572, 1287
v. City of Eau Claire, 78 Wis. 457, 1222
v. City of Jackson, 106 Mich. 136, 1329
v. City of Louisville, 9 Ky. L. 779, 1397
v. City of Madison, 7 Ind. 86, 88, 112
v. City of Milwaukee, 18 Wis. 69, 1255
v. City of Newburgh, 77 N. Y. 130, 257, 260, 644, 894
v. City of Newcastle, 178 Pa. St. 298, 1330
v. City of Omaha, 49 Neb. 883, 1300, 1774
v. City of Philadelphia, 13 Phila. 177, 662
v. City of Rochester, 76 N. Y. 506, 797, 815, 819, 1097, 1768
v. City of Rochester, 92 N. Y. 463, 676
v. City of St. Joseph, 45 Mo. 449, 1790
v. City of San Antonio, 17 Tex. 643, 1414, 1420
v. City of Sedalia, 152 Mo. 283, 1708
Smith v. City of Spokane, 16 Wash. 403, 1328
City of Syracuse, 44 N. Y. S. 852, 749, 750
v. City of Toledo, 24 Ohio St. 126, 1255
v. City of Vicksburg, 54 Miss. 615, 1503
v. City of Waterbury, 54 Conn. 174, 182
v. City of Wilmington, 98 N. C. 343, 370, 371
v. Clark Co., 54 Mo. 58, 986, 995, 1001, 1016
v. Cofran, 34 Cal. 310, 1533
v. Commissioners, 21 Kan. 669, 1035
v. Commonwealth, 41 Pa. St. 335, 175
v. Commonwealth, 25 Gratt. 780, 317
v. Corporation of Aberdeen, 25 Miss. 209, 1270
v. Corporation &c. of Washington, 20 How. 135, 801, 824
v. Cosgrove, 44 Atl. 73, 165
v. Cronkhite, 8 Ind. 134, 313
v. Crutcher, 92 Ky. 586, 368
v. Davis, 30 Cal. 536, 1533
v. Dedham, 144 Mass. 177, 896
v. Directors &c., 40 Iowa 518, 1494
v. Engle, 44 Iowa 265, 1201
v. Epping, 69 N. H. 558, 977, 997
v. Farrelly, 52 Cal. 77, 1552
v. Ferris, 6 Hun 553, 1571
v. Gould, 61 Wis. 31, 212, 1216, 1218
v. Green, 109 Cal. 228, 1814
v. Holmes, 54 Mich. 104, 226
v. Hubbard, 1 Pickle 306, 1172
v. Inhabitants &c., 27 Maine 145, 1725
v. Inhabitants &c., 144 Mass. 177, 848, 877
v. Jefferson Co., 10 Colo. 17, 1472
v. Kernochen, 7 How. 198, 108
v. Kockersperger, 180 Ill. 527, 1285, 1711
v. Law, 21 N. Y. 296, 274
v. Magourich, 44 Ga. 163, 651
v. Marston, 5 Tex. 426, 536
v. Mayor &c., 13 Cal. 531, 181, 663, 664
v. Mayor &c., 81 Mich. 123, 387, 1518, 1654, 1655
v. Mayor &c., 40 N. J. L. 186, 181
v. Mayor &c., 10 N. Y. 504, 253
v. Mayor &c., 42 N. Y. S. 522, 719
v. Mayor &c., 45 N. Y. S. 239, 793
v. Mayor &c., 4 Lea 69, 664, 668
v. McCarthy, 56 Pa. St. 359, 58, 61, 82, 83, 384, 1517
v. McDowell, 148 Ill. 51, 1703
v. Milwaukee &c. Exch., 91 Wis. 360, 596
v. Minto, 30 Or. 351, 1286
v. Morse, 2 Cal. 524, 282, 547, 1539
v. Nashville, 88 Tenn. 464, 572
v. New York, 37 N. Y. 518, 183
v. People, 154 Ill. 58, 53
v. Proctor, 6 N. Y. S. 212, 1486
v. Proctor, 130 N. Y. 319, 989
v. Proprietors &c., 8 Pick. 178, 1806
v. School District, 69 Mich. 589, 852, 1491
v. Schroeder, 15 Minn. 33, 1725
v. Sherry, 50 Wis. 210, 1516, 1518
v. Simmons, 103 Pa. St. 32, 1182
v. Smith, 3 Dessaus. 557, 445
v. Stapler, 53 Ga. 300, 333
v. State, 23 N. J. L. 712, 1105, 1106
v. Syracuse Imp. Co., 161 N. Y. 484, 750, 1136
v. Tobener, 32 Mo. App. 601, 471
v. Town of Westerly, 19 R. I. 437, 1809

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Smith v. Village of Adrian, 1 Mich. 495, 90, 103
v. Weldon, 73 Ind. 454, 696
v. Wildes, 143 Mass. 556, 1639
v. Wright, 24 Barb. 170, 222
v. Wright, 27 Barb. 621, 1591
v. Zaner, 4 Ala. 99, 134
Smoot v. Mayor &c., 24 Ala. 112, 85
Smout v. Ilbery, 10 M. & W. 1, 217
Smyrk v. Sharp, 82 Md. 97, 524
Smyth v. City of Bangor, 72 Maine 249, 1336
v. Titcomb, 31 Maine 272, 58
Snedicor v. Davis, 17 Ala. 472, 226
Sneeson v. Kupfer, 21 R. I. 560, 1340
Snell v. Bridgewater &c. Co., 24 Pick. 296, 106
v. Corporation &c., 30 U. C. Q. B. 81, 1403
Snelling v. Joffrion, 42 La. An. 886, 636, 835
Snipes v. City of Winston, 126 N. C. 374, 730
Snodgrass v. Morris, 123 Ind. 425, 1487
Snow v. Inhabitants &c., 109 Mass. 123, 680
Snyder v. City of Albion, 113 Mich. 275, 930
v. City of Lexington, 20 Ky. L. 1562, 785, 1373
v. City of Mt. Pulaski, 176 Ill. 397, 1105, 1316, 1758
v. City of North Lawrence, 8 Kan. 82, 517
v. Foster, 77 Iowa 638, 633, 652
v. Kantner, 190 Pa. St. 440, 1708
v. Plass, 28 N. Y. 465, 1570
v. President &c., 6 Ind. 237, 1776
v. Trumpbour, 38 N. Y. 355, 1570
Snyder Tp. v. Bovaird, 122 Pa. St. 442, 623, 966
Society &c. v. City of London, 29 Conn. 174, 983, 986
v. Pawlet, 4 Peters 480, 51, 64, 84
v. Vandyke, 2 Whart. 309, 206
Society of Bethany v. Sperry, 10 Conn. 200, 340, 343
Society Perun v. Cleveland, 43 Ohio St. 481, 1029
Soens v. City of Racine, 10 Wis. 270, 548, 558
Solomon v. City of Kingston, 24 Hun 562, 800
Solon v. Williamsburg Sav. Bank, 35 Hun 1, 987, 988
Somerset Co. v. Parson, 105 Pa. St. 360, 295
Sonoma Co. Tax Case, 13 Fed. 789, 1550, 1552
Soon Hing v. Crowley, 113 U. S. 703, 492
Soper v. Henry Co., 26 Iowa 264, 14, 776
v. Inhabitants &c., 28 Maine 193, 346, 364, 1485
v. State, 48 Kan. 540, 902
Soule v. City of Passaic, 47 N. J. Eq. 28, 1216
v. Thelander, 31 Minn. 227, 1483
South v. Maryland, 18 How. 396, 329
Southard v. Inhabitants, 53 Maine 389, 341, 358
South Carolina v. Georgia, 93 U. S. 4, 1576
South Covington &c. R. Co. v. Berry, 13 Ky. L. 943, 596
Southerland v. Board &c., 96 N. C. 49, 370, 374
Southern Bell Tel. &c. Co. v. City of Richmond, 98 Fed. 671, 525
Southern Electric &c. Co. v. City of Philadelphia, 191 Pa. St. 170, 1548
Southern Pac. R. Co. v. Reed, 41 Cal. 256, 682
Southern Pav. Co. v. City of Chattanooga, 48 S. W. 92, 726
Southern Plank R. Co. v. Hixon, 5 Ind. 165, 207, 296
Southern R. Co. v. Atlanta R. &c. Co., 111 Ga. 679, 1710
v. City of Jackson, 33 Miss. 334, 1247
South Hampton v. Hampton Falls, 11 N. H. 134, 1048
South Ottawa v. Perkins, 94 U. S. 429, 210
South Park Comrs. v. Chicago &c. R. Co., 107 Ill. 105, 1249, 1250, 1251
South Platte Land Co. v. Buffalo Co., 15 Neb. 605, 393
v. City of Crete, 11 Neb. 344, 1717
Southport v. Ogden, 23 Conn. 128, 97, 468, 494, 523
South School Dist. v. Blakeslee, 13 Conn. 227, 344, 350, 362, 1422, 1485
Southwell v. City of Detroit, 105 Mich. 514, 1336
Sower v. City of Philadelphia, 35 Pa. St. 231, 464
Sowles v. Village of St. Albans, 71 Vt. 418, 1273, 1274, 1293
Spalding v. Kelly, 66 Mich. 693, 420
Spangler v. City &c. of San Francisco, 84 Cal. 12, 1180
v. Jacoby, 14 Ill. 297, 299, 1421
Spann v. Board, &c., 64 Ga. 498, 895
Sparhawk v. Union R. Co., 54 Pa. St. 501, 1104
Sparks Mfg. Co. v. Town of Newton, 45 Atl. 596, 610
Sparland v. Barnes, 98 Ill. 595, 1528
Sparrow v. Evansville &c. R. Co., 7 Ind. 369, 994
Spaulding v. Andover, 54 N. H. 38, 757
v. Arnold, 125 N. Y. 194, 925, 1678
v. Chicago &c. R. Co., 30 Wis. 110, 1109
v. City of Lowell, 23 Pick. 71, 210, 233, 251, 647, 666, 867, 1402
v. City of Saginaw, 84 Mich. 134, 289
v. City of Waverly, 44 N. Y. S. 112, 930
v. Inhabitants &c., 153 Mass. 129, 640
v. Milwaukee &c. R. Co., 57 Wis. 304, 708
v. North San Francisco &c. Assn., 87 Cal. 40, 1137, 1194
v. Wesson, 115 Cal. 441, 1151, 1291
Speaker v. Glass, L. R. 3 P. C. 560, 205
Spearbracker v. Town of Larrabee, 64 Wis. 573, 1618, 1622, 1631
Specht v. City of Detroit, 20 Mich. 168, 628
Speedling v. Worth Co., 68 Iowa 152, 1068
Speer v. Board &c., 60 U. S. App. 38, 32 C. C. A. 101, 88 Fed. 749, 66, 69, 70, 547, 951, 952, 1757
v. Mayor &c., 85 Ga. 49, 1253
Speight v. People, 87 Ill. 600, 845
Speir v. Brooklyn, 19 N. Y. S. 665, 1111
v. City of Brooklyn, 18 N. Y. S. 170, 807
v. City of New Utrecht, 121 N. Y. 420, 1374, 1567
Spellman v. City of New Orleans, 45 Fed. 3, 1399
v. Inhabitants &c., 131 Mass. 443, 1623
Spelman v. City of Portage, 41 Wis. 144, 1218
Spencer v. Andrew, 82 Iowa 14, 1368
v. Merchant, 100 N. Y. 585, 1242
v. Merchant, 125 U. S. 345, 559, 1238, 1239, 1242, 1252, 1302
v. Perry, 17 Maine 413, 335

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Spencer v. Pierce, 5 R. I. 63, 1020
v. Sully Co., 4 Dak. 474, 939
Spengler v. Trowbridge, 62 Miss. 46, 611
Spicer v. Board &c., 126 Ind. 369, 1578, 1579
v. Hoop, 51 Ind. 365, 656
Spidell v. Johnson, 128 Ind. 235, 947
Spiller v. Inhabitants &c., 12 Allen 127, 1495
Spilman v. City of Parkersburg, 35 W. Va. 605, 877, 879, 880, 881, 893, 1394
Spitzer v. Village of Blanchard, 82 Mich. 234, 634
Spitznogle v. Ward, 64 Ind. 30, 221
Spooner v. Inhabitants &c., 139 Mass. 235, 1624
Sprague v. Brown, 40 Wis. 612, 150
v. City of Rochester, 34 N. Y. S. 1126, 1335
v. City of Rochester, 64 N. Y. S. 846, 1797
v. City of Rochester, 159 N. Y. 20, 1361
v. Coenen, 30 Wis. 209, 564
v. Norway, 31 Cal. 173, 152
Sprigg v. Garrett Park, 89 Md. 406, 1406
Spring v. Inhabitants &c., 137 Mass. 554, 823
Springer v. City of Chicago, 135 Ill. 552, 1211, 1602
v. City of Chicago, 159 Ill. 515, 1290
v. City of Philadelphia, 12 Atl. 490, 1605
v. Clay Co., 35 Iowa 241, 959
Springfield v. La Claire, 49 Ill. 476, 1618
v. Walker, 42 Ohio St. 543, 662
Springfield &c. Ins. Co. v. Village of Keeseville, 148 N. Y. 46, 785, 786, 790
v. Village of Keeseville, 29 N. Y. S. 1130, 786
Springfield R. Co. v. City of Springfield, 85 Mo. 676, 1574
Spring Valley Coal Co. v. City of Spring Valley, 65 Ill. App. 571, 800
v. People, 157 Ill. 543, 1548
Spring Valley Water-works v. City of San Francisco, 82 Cal. 286, 1460, 1461
v. San Mateo Water-works, 64 Cal. 123, 685, 1448
v. Schottler, 110 U. S. 347, 6, 104
v. Schottler, 62 Cal. 69, 106, 109, 1689
Springwells Tp. v. Wayne Co. Treasurer, 58 Mich. 240, 409
Sproul v. City of Seattle, 17 Wash. 256, 793, 796
Sprowl v. Lawrence, 33 Ala. 674, 313
Spurrier v. Wirtner, 48 Iowa 486, 708
Squire v. Preston, 31 N. Y. S. 174, 716
Stack, In re, 50 Hun 385, 1220
v. City of East St. Louis, 85 Ill. 377, 588
Stackhouse v. City of Lafayette, 26 Ind. 17, 1179, 1180
v. Clark, 52 N. J. L. 291, 355, 356
Stackpole v. Healy, 16 Mass. 33, 1570
Stadler v. City of Detroit, 13 Mich. 346, 200, 212
v. Fahey, 87 Ill. App. 411, 514, 518
v. Roth, 59 Mo. 400, 1427
Stafford v. City of Oskaloosa, 57 Iowa 748, 1598
v. City of Oskaloosa, 64 Iowa 251, 1609
v. Mayor &c., 7 Johns. 541, 701
Stahlhut v. Bauer, 51 Neb. 64, 209
Staldter v. City of Huntington, 153 Ind. 354, 745
Staley v. Mayor &c., 56 N. Y. S. 237, 1343
Stallcup v. City of Tacoma, 13 Fed. 337, 1032
Stamford Water Co. v. Stanley, 39 Hun 424, 688
Stamp v. Cass Co., 47 Mich. 330, 670
Stamper v. Temple, 6 Humph. 113, 671
Standart v. Burtis, 46 Hun 82, 212
Standish v. Washburn, 21 Pick. 237, 1618
Stanford v. City of San Francisco, 111 Cal. 198, 1369
Stanhart v. Sitley, 19 Atl. 464, 1415
Stanley v. City of Davenport, 54 Iowa 463, 591, 1612
v. McGeorge, 17 Wash. 8, 874
Stanton v. Camp, 4 Barb. 274, 262
v. City of Chicago, 154 Ill. 23, 1145
v. City of Salem, 145 Mass. 476, 1605
v. City of Springfield, 12 Allen 566, 1586, 1606, 1612
Staples v. Town of Canton, 69 Mo. 592, 1580
Stapleton v. City of Newburgh, 41 N. Y. S. 96, 1315, 1343
Starbird v. Inhabitants &c., 51 Maine 101, 341
Starbuck v. Murray, 5 Wend. 148, 692
Starin v. Town of Genoa, 23 N. Y. 439, 635, 982
Stark v. Lancaster, 57 N. H. 88, 1596
Starkey v. City of Minneapolis, 19 Minn. 203, 260
Starr v. City of Burlington, 45 Iowa 87, 466, 1255
v. Trustees, 6 Wend. 564, 1418, 1724
Starwin v. Genoa, 23 N. Y. 439, 1010
State v. Adams, 65 Ind. 393, 1694
v. Adams, 58 Vt. 694, 357
v. Addison, 2 S. C. 499, 1545
v. Alexander, 107 Iowa 177, 206, 297
v. Allen, 21 Ind. 516, 206
v. Allen, 23 Neb. 451, 905
v. Allen, 7 Jones L. 564, 333
v. Allen, 2 McCord 55, 1048
v. Alling, 12 Ohio 16, 171
v. Alter, 5 Ohio C. C. 253, 163
v. Anderson, 26 Fla. 240, 1691
v. Anderson, 44 Ohio St. 247, 113, 120
v. Anderson Co., 8 Baxt. 249, 1528
v. Andrews, 11 Neb. 523, 1400
v. Andrews, 15 R. I. 394, 154
v. Apgar, 31 N. J. L. 358, 1724
v. Appleby, 25 S. C. 100, 933, 1664
v. Applegate, 49 N. J. L. 376, 950
v. Armstrong, 30 Neb. 493, 417
v. Assessors &c., 43 N. J. L. 338, 1522
v. Assessors &c., 51 N. J. L. 279, 1540, 1663
v. Atkins, 35 Ga. 315, 17
v. Atkinson, 65 N. J. L. 171, 1686
v. Atlantic City, 49 N. J. L. 558, 645, 848, 877, 880, 881, 897, 1449
v. Babcock, 19 Neb. 230, 1536
v. Babcock, 20 Neb. 522, 1255
v. Babcock, 21 Neb. 599, 985
v. Babcock, 22 Neb. 278, 973
v. Babcock, 23 Neb. 179, 981
v. Babcock, 25 Neb. 709, 59, 61, 83
v. Bacon, 31 S. C. 120, 950
v. Bader, 56 Ohio St. 718, 1698
v. Baker, 43 La. An. 1168, 1404
v. Baker, 44 La. An. 79, 537, 1419
v. Baker, 38 Wis. 71, 369, 370
v. Baldwin, 45 Conn. 134, 524
v. Baltimore &c. R. Co., 12 Gill & J. 399, 763
v. Bank, 45 Mo. 528, 217

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

State v. Barbour, 53 Conn. 76, 159, 160, 162, 301, 302
v. Bardon, 103 Wis. 297, 931
v. Barnes, 22 Fla. 8, 921
v. Barnet, 46 N. J. L. 62, 464
v. Bartlett, 30 Miss. 624, 311, 312
v. Bartlett, 35 Wis. 287, 536
v. Bateman, 96 N. C. 5, 1491
v. Baxter, 50 Ark. 447, 614
v. Bays, 31 Neb. 514, 1654
v. Beacham, 125 N. C. 652, 550
v. Bean, 91 N. C. 554, 1403
v. Beattie, 16 Mo. App. 131, 607
v. Beeman, 35 Maine 242, 346, 362
v. Beirce, 27 Conn. 319, 538
v. Bell, 34 Ohio St. 194, 282, 547, 1132
v. Bennett, 22 Neb. 470, 1434
v. Bentley, 23 N. J. L. 532, 1501, 1724
v. Benton, 29 Neb. 460, 1489, 1490
v. Berdetta, 73 Ind. 185, 585, 1313, 1322
v. Bergman, 6 Or. 341, 607
v. Berkeley, 140 Mo. 184, 186
v. Berry, 12 Iowa 58, 106, 695
v. Berry, 14 Ohio St. 315, 380
v. Berry, 47 Ohio St. 232, 380, 1690
v. Berry, 13 Wash. 708, 66
v. Bevers, 86 N. C. 588, 233
v. Bieler, 87 Ind. 320, 1676
v. Bilby, 60 Kan. 130, 63
v. Bill, 13 Ired. L. 373, 543
v. Binder, 38 Mo. 450, 112, 290, 374
v. Bishop, 39 N. J. L. 226, 684
v. Blackstone, 63 Wis. 362, 988
v. Blair, 32 Ind. 313, 309
v. Blair, 76 N. C. 78, 328
v. Blake, 35 N. J. L. 208, 645
v. Blake, 36 N. J. L. 442, 673
v. Blend, 121 Ind. 514, 1432, 1434
v. Blohm, 26 La. An. 538, 326
v. Bloom, 19 Neb. 562, 1487
v. Bloom, 17 Wis. 521, 196
v. Blossom, 19 Nev. 312, 197
v. Bloxham, 26 Fla. 407, 173
v. Boal, 46 Mo. 528, 378, 379
v. Board &c., 17 Fla. 29, 881
v. Board &c., 27 Fla. 438, 1681
v. Board &c., 25 Ind. 210, 1660
v. Board &c., 45 Ind. 501, 1659
v. Board &c., 63 Ind. 497, 1659
v. Board &c., 131 Ind. 90, 1659, 1660
v. Board &c., 39 Kan. 657, 1027
v. Board &c., 41 Kan. 630, 1518
v. Board &c., 40 La. An. 298, 924
v. Board &c., 51 La. An. 1142, 872
v. Board &c., 27 Minn. 442, 1139, 1198
v. Board &c., 14 Neb. 22, 1535
v. Board &c., 17 Nev. 96, 1487
v. Board &c., 37 N. J. L. 254, 667
v. Board &c., 39 N. J. L. 632, 1447
v. Board &c., 39 N. J. L. 660, 1525, 1527
v. Board &c., 40 N. J. L. 302, 1575, 1577, 1578
v. Board &c., 41 N. J. L. 135, 663
v. Board &c., 49 N. J. L. 170, 1437, 1445
v. Board, 50 N. J. L. 457, 1689, 1693
v. Board &c., 51 N. J. L. 240, 1657
v. Board &c., 52 N. J. L. 69, 1670
v. Board &c., 53 N. J. L. 531, 855
v. Board &c., 54 N. J. L. 325, 1091, 1092
v. Board &c., 57 N. J. L. 588, 514, 573
v. Board &c., 63 N. J. L. 55, 1711
v. Board &c., 65 N. J. L. 307, 1809, 1810
v. Board &c., 8 Atl. 509, 190
v. Board &c., 27 Ohio St. 96, 1529
State v. Board &c., 35 Ohio St. 368, 1478
v. Board &c., 24 Wis. 683, 1646, 1673, 1687
v. Board &c., 61 Wis. 278, 418
v. Board &c., 63 Wis. 234, 1481
v. Board &c., 70 Wis. 485, 561
v. Board &c., 71 Wis. 321, 837
v. Boardman, 93 Maine 73, 1407
v. Boden, 51 N. J. L. 114, 303
v. Boecker, 56 Mo. 17, 199
v. Bolche, 1 S. W. 234, 1683
v. Boll, 59 Mo. 321, 1119
v. Bonell, 42 La. An. 1110, 526
v. Bonnell, 119 Ind. 494, 1677
v. Bonner, 72 Mo. 387, 328
v. Borough &c., 52 N. J. L. 32, 54
v. Borough of Vineland, 60 N. J. L. 264, 1153
v. Bradford, 32 Vt. 50, 1689
v. Bradley, 54 Conn. 74, 48, 1474
v. Branin, 23 N. J. L. 484, 90, 103, 107, 108, 453, 1500, 1501, 1513
v. Brennan's Liquors, 25 Conn. 278, 195
v. Brewer, 64 Ala. 287, 1533
v. Briel, 58 Minn. 152, 1299
v. Brigantine Borough, 54 N. J. L. 476, 856
v. Brinkerhoff, 66 Tex. 45, 185, 198
v. Brittain, 89 N. C. 574, 494
v. Brittin, 52 La. An. 94, 180, 183
v. Brodboll, 28 Neb. 254, 922
v. Broodbelt, 89 Md. 565, 603
v. Brossfield, 67 Mo. 331, 638
v. Brown, 11 Ired. L. 141, 331
v. Brown, 112 Ind. 600, 912
v. Brown, 54 Md. 318, 332
v. Brown, 50 Minn. 353, 1071, 1072
v. Brown, 53 N. J. L. 162, 1514, 1515
v. Browning, 28 N. J. L. 556, 1485
v. Bryce, 7 Ohio 414, 207
v. Burbridge, 24 Fla. 112, 371
v. Burdge, 95 Wis. 390, 1763
v. Burton, 45 Wis. 150, 1472
v. Button, 25 Wis. 109, 431
v. Butts, 31 Kan. 537, 370, 371
v. Buttz, 9 S. C. 156, 198
v. Cainan, 94 N. C. 880, 507, 519, 537, 606
v. Campbell, 64 N. H. 402, 601
v. Canal &c. R. Co., 50 La. An. 1189, 505
v. Canterbury, 28 N. H. 195, 61, 83
v. Cantieny, 34 Minn. 1, 519, 530
v. Carleton, 1 Gill 249, 317
v. Carpenter, 60 Conn. 97, 501, 538, 1419
v. Carr, 129 Ind. 44, 172
v. Carr, 5 N. H. 367, 64
v. Carroll, 38 Conn. 449, 66, 69, 195, 196, 197, 289, 1420
v. Cather, 22 Neb. 792, 950
v. Cavers, 22 Iowa 343, 381
v. Chamberlin, 37 N. J. L. 388, 519
v. Chamber of Commerce &c., 20 Wis. 63, 626
v. Chapman, 44 Conn. 595, 301, 302
v. Chicago &c. R. Co., 80 Iowa 586, 692
v. Churchill, 41 Mo. 41, 313
v. Cincinnati Gas &c. Co., 18 Ohio St. 262, 516, 566, 568, 1464, 1808
v. Circuit Court, 15 Atl. 272, 561
v. City Council, 74 Ala. 226, 991, 1027
v. City Council, 30 N. J. L. 365, 1268
v. City Council &c., 31 N. J. L. 547, 1257

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

State v. City Council, 34 N. J. L. 99, 1234
v. City Council &c., 39 N. J. L. 416, 1657
v. City Council &c., 46 N. J. L. 124, 1540
v. City Council &c., 47 N. J. L. 64, 1694
v. City Council &c., 50 N. J. L. 87, 97, 108, 119, 493
v. City Council, 5 Rich. L. 561, 1511
v. City Council &c., 10 Rich. L. 240, 1537
v. City Council, 12 Rich. 702, 1198
v. City Council &c., 2 Speers L. 623, 1507
v. City Council &c., 2 Speers L. 719, 1500, 1507
v. City of Bayonne, 35 N. J. L. 335, 463, 465
v. City of Brunswick, 32 N. J. L. 548, 1234
v. City of Camden, 50 N. J. L. 87, 97, 108, 119, 493
v. City of Camden, 63 N. J. L. 186, 612
v. City of Cape May, 58 N. J. L. 565, 1350
v. City of Cincinnati, 19 Ohio 178, 1494
v. City of Cincinnati, 20 Ohio St. 18, 54, 55, 119
v. City of Columbia, 27 S. C. 137, 1500
v. City of Davenport, 12 Iowa 335, 1526, 1527, 1528, 1533
v. City of Des Moines, 96 Iowa 521, 70
v. City of Eau Claire, 40 Wis. 533, 666, 688
v. City of Elizabeth, 37 N. J. L. 330, 1250
v. City of Elizabeth, 37 N. J. L. 432, 465, 1257
v. City of Elizabeth, 54 N. J. L. 462, 592
v. City of Elizabeth, 58 N. J. L. 619, 502
v. City of Emporia, 57 Kan. 710, 1543
v. City of Great Falls, 19 Mont. 518, 879
v. City of Hudson, 29 N. J. L. 115, 645
v. City of Jersey City, 54 N. J. L. 310, 1432
v. City of Jersey City, 42 Atl. 845, 754
v. City of Kansas City, 60 Kan. 518, 1166
v. City of Kearney, 25 Neb. 262, 1653
v. City of Kearney, 49 Neb. 337, 737
v. City of Milwaukee, 25 Wis. 122, 89
v. City of Minneapolis, 32 Minn. 501, 991
v. City of New Albany, 127 Ind. 221, 1667, 1675
v. City of Newark, 48 N. J. L. 101, 1234, 1253
v. City of New Orleans, 30 La. An. 129, 1526, 1531
v. City of New Orleans, 34 La. An. 477, 1529
v. City of New Orleans, 34 La. An. 1149, 1525
v. City of New Orleans, 41 La. An. 91, 411, 636, 1465
v. City of New Orleans, 50 La. An. 880, 617, 953, 955
State v. City of New Orleans, 51 La. An. 99, 194, 722
v. City of New Orleans, 51 La. An. 699, 722
v. City of New Whatcom, 8 Wash. 7, 389
v. City of Orange, 54 N. J. L. 111, 486, 1156
v. City of Orange, 13 Atl. 240, 1404
v. City of Passaic, 4 N. J. L. 90, 260, 528, 1254
v. City of Passaic, 42 N. J. L. 87, 535
v. City of Passaic, 54 N. J. L. 340, 1249
v. City of Passaic, 63 N. J. L. 208, 732
v. City of Perth Amboy, 38 N. J. L. 425, 645, 1254
v. City of Phillipsburg, 23 Mont. 16, 737, 1662
v. City of Plainfield, 54 N. J. L. 526, 584
v. City of Portage, 12 Wis. 562, 558, 593, 1234
v. City of Portland, 74 Maine 268, 831
v. City of St. Anthony, 10 Minn. 433, 1485
v. City of St. Louis, 90 Mo. 19, 200
v. City of St. Paul, 36 Minn. 529, 1544
v. City of Toledo, 48 Ohio St. 112, 1543
v. City of Topeka, 36 Kan. 76, 541, 1415
v. City of Trenton, 35 N. J. L. 485, 186, 187, 547
v. City of Waxahachie, 81 Tex. 626, 390, 391, 398, 402
v. Clark, 4 Ind. 315, 1038
v. Clark, 42 Mo. 519, 1740
v. Clark, 52 N. J. L. 291, 846, 1486, 1489
v. Clark, 73 N. C. 255, 319
v. Clarke, 69 Conn. 371, 506
v. Clarke, 50 Mo. 17, 501
v. Clarke, 54 Mo. 17, 110, 111, 112, 495, 500, 519, 1574
v. Clarke, 25 N. J. L. 54, 111, 494, 495
v. Clarke, 3 Nev. 566, 185, 199
v. Clary, 25 Neb. 403, 1472, 1473
v. Clay Co., 46 Mo. 231, 1526
v. Clayton, 27 Kan. 442, 199, 200
v. Cleveland, 80 Mo. 108, 212
v. Cleveland, 3 R. I. 117, 527
v. Clevenger, 27 Neb. 422, 1518
v. Clothier, 30 N. J. L. 351, 1724
v. Cobb, 64 Ala. 127, 1027
v. Cockrell, 2 Rich. L. 6, 156
v. Cole Co. Court, 80 Mo. 80, 1055
v. Collins, 43 N. J. L. 562, 1502
v. Collins, 60 N. J. L. 367, 1504
v. Colvig, 15 Or. 57, 313
v. Commercial Bank, 13 Sm. & M. 569, 123
v. Commissioners, 6 Ohio St. 280, 1527, 1528
v. Commissioners &c., 21 Ohio St. 648, 663
v. Commissioners &c., 36 Ohio St. 526, 753
v. Commissioners &c., 37 Ohio St. 526, 881
v. Commissioners, 49 Ohio St. 301, 1648
v. Commissioners &c., 17 Ohio C. C. 275, 1685
v. Commissioners &c., 2 N. C. Law 617, 213
v. Commissioners, 4 Dev. 345, 214

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

State v. Commissioners, 17 Nev. 96, 922, 923
v. Commissioners, 38 N. J. L. 190, 1261
v. Commissioners &c., 46 N. J. L. 116, 1198
v. Common Council &c., 25 N. J. L. 536, 200, 205, 626
v. Common Council &c., 33 N. J. L. 110, 340
v. Common Council &c., 36 N. J. L. 198, 106, 1106
v. Common Council &c., 45 N. J. L. 279, 592
v. Common Council &c., 7 Wis. 688, 837, 971, 973
v. Common Council &c., 15 Wis. 30, 280, 410, 1527, 1581, 1681
v. Common Council &c., 20 Wis. 87, 1526, 1527, 1528, 1530
v. Common Council &c., 42 Wis. 287, 694
v. Common Council &c., 90 Wis. 612, 203, 204, 880, 875, 878, 986
v. Compton, 28 Neb. 485, 627, 1473, 1484
v. Conlin, 27 Vt. 318, 541, 1414
v. Conlon, 65 Conn. 478, 504
v. Conover, 28 N. J. L. 224, 328, 331
v. Conover, 63 N. J. L. 191, 1504
v. Constantine, 42 Ohio St. 437, 369, 376
v. Consumers' Water Co., 51 N. J. L. 420, 584, 1454
v. Cooper, 20 Fla. 547, 955
v. Copeland, 74 Minn. 371, 1684
v. Corner, 22 Neb. 265, 369, 370
v. Corning, 44 Kan. 442, 943
v. Cornish, 66 N. H. 329, 1067
v. Corporation of Savannah, 1 T. W. P. Charl. 235, 497
v. Corporation of Shelbyville, 4 Sneed 176, 831
v. Corrigan &c. St. R. Co., 85 Mo. 263, 510, 590, 1158, 1183
v. Council, 106 Iowa 731, 58
v. Council &c., 38 N. J. L. 430, 667
v. Council &c., 47 N. J. L. 64, 153
v. Council, 2 Speers L. 623, 1500
v. County Board &c., 20 Neb. 595, 627
v. County Com'rs, 21 Fla. 1, 443
v. County Com'rs, 22 Fla. 29, 1683
v. County Com'rs, 23 Fla. 483, 121
v. County Com'rs, 23 Kan. 264, 381
v. County Com'rs, 6 Neb. 129, 695
v. County Com'rs, 31 Neb. 465, 1490
v. County Com'rs, 28 S. C. 258, 1664
v. County Court, 19 Ark. 360, 1502
v. County Court, 34 Mo. 546, 1538
v. County Court, 44 Mo. 230, 313
v. County Court, 44 Mo. 504, 983
v. County Court, 64 Mo. 30, 1540
v. County Court, 33 W. Va. 589, 1651
v. County Court, 47 W. Va. 672, 1687
v. County Judge, 5 Iowa 380, 1527
v. County Judge, 7 Iowa 186, 339, 381
v. Court of Common Pleas, 36 N. J. L. 72, 84
v. Covington, 29 Ohio St. 102, 45, 150, 1433
v. Cowan, 29 Mo. 330, 104, 497
v. Cowgill &c. Mill Co., 156 Mo. 620, 463, 714, 1812
v. Cozzens, 42 La. An. 1069, 1357
v. Cram, 84 Maine 271, 1411, 1412, 1415
v. Cram, 16 Wis. 343, 424
v. Crane, 36 N. J. L. 394, 697, 1254
State v. Crenshaw, 94 N. C. 877, 507
v. Crites, 48 Ohio St. 142, 1680
v. Crooks, 7 Ohio 221, 326
v. Crosley, 36 N. J. L. 425, 301
v. Cross, 18 S. W. 170, 1074
v. Cruickshank, 71 Vt. 94, 538
v. Crummery, 17 Minn. 72, 496
v. Culver, 65 Mo. 607, 1574
v. Curran, 12 Ark. 321, 61, 83
v. Custer, 11 Ind. 210, 1472
v. Dahl, 65 Wis. 510, 901
v. Dallas Co. Court, 72 Mo. 329, 996
v. Daly, 49 N. J. L. 403, 955
v. Daly, 50 N. J. L. 356, 935, 954
v. Davidson, 50 La. An. 1297, 1386
v. Davidson, 32 Wis. 114, 342, 359
v. Daviess Co. Court, 64 Mo. 30, 991
v. Davis, 17 Minn. 429, 1679
v. Davis, 44 Mo. 129, 183
v. Dawson, 22 Ind. 272, 1813
v. Dean, 23 N. J. L. 335, 1233
v. Deane, 38 Fla. 121, 1675
v. De Bar, 58 Mo. 395, 110, 112
v. De Gress, 53 Tex. 387, 185
v. Delieseline, 1 McC. 52, 156
v. Denny, 118 Ind. 449, 1075, 1432, 1433, 1532
v. Dering, 84 Wis. 585, 509
v. Deshler, 25 N. J. L. 177, 1475
v. Dillon, 125 Ind. 65, 162
v. District Board &c., 76 Wis. 177, 1494, 1495
v. District Court &c., 29 Minn. 62, 1140
v. District Court &c., 33 Minn. 164, 1198
v. District Court &c., 33 Minn. 235, 302
v. District Court &c., 33 Minn. 295, 1139, 1140
v. District Court &c., 41 Minn. 518, 480
v. District Court &c., 47 Minn. 406, 1287
v. District Court &c., 66 Minn. 161, 1310
v. District Court, 68 Minn. 242, 1251
v. District Court &c., 75 Minn. 292, 1287, 1293, 1310
v. District Court &c., 77 Minn. 248, 1287
v. District Court &c., 78 Minn. 464, 1159
v. District Court &c., 80 Minn. 293, 513, 1275, 1293, 1303, 1307
v. District Court &c., 4 N. W. 1107, 697
v. District of Narragansett, 16 Atl. 901, 56
v. Doherty, 25 La. An. 119, 200
v. Doherty, 16 Wash. 382, 118, 171
v. Donahay, 30 N. J. L. 404, 348
v. Donovan, 89 Maine 448, 209
v. Douglass, 33 N. J. L. 363, 1503
v. Dousman, 28 Wis. 541, 54
v. Dowling, 50 Mo. 134, 1511, 1724
v. Downs, 60 Kan. 788, 611
v. Drake, 33 N. J. L. 194, 1238
v. Druly, 3 Ind. 431, 332
v. Duffy, 7 Nev. 342, 1494
v. Dulaney, 43 La. An. 500, 508
v. Dunbar, 43 La. An. 836, 537, 1420
v. Dunn, 11 La. An. 549, 326
v. Dunson, 71 Texas 65, 93, 402, 407, 408, 446
v. Duryea, 45 N. J. L. 258, 1248
v. Dwyer, 21 Minn. 512, 494
v. Earnhardt, 107 N. C. 789, 606
v. Eastman, 109 N. C. 785, 1556
v. Easton R. Co., 36 N. J. L. 181, 679, 1571

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

State v. East Orange, 41 N. J. L. 127, 500, 506
v. Eberhardt, 14 Neb. 201, 1655
v. Eberly, 12 Neb. 616, 1745
v. Echols, 41 Kan. 1, 1486
v. Edison, 76 Tex. 302, 1474
v. Ellis, 43 La. An. 825, 1711
v. Ellis, 52 La. An. 1065, 1811
v. Elvins, 32 N. J. L. 362, 425, 440
v. Elwood, 11 Wis. 17, 424
v. Engelmann, 106 Mo. 628, 1568
v. Everett, 52 Mo. 89, 1683
v. Executors &c., 8 La. An. 171, 563
v. Faber, 50 La. An. 952, 528
v. Fagan, 42 Conn. 32, 297, 373
v. Falconer, 44 Ala. 696, 313
v. Falkenburg, 15 N. J. L. 320, 1724
v. Farr, 47 N. J. L. 208, 289, 296, 473
v. Farrier, 47 N. J. L. 383, 197
v. Fenton, 29 Neb. 348, 921
v. Ferguson, 33 N. H. 424, 526, 581
v. Ferguson, 31 N. J. L. 107, 199
v. Fiedler, 43 N. J. L. 400, 954
v. Fillmore Co., 32 Neb. 870, 1645
v. Findley, 10 Ohio 51, 313
v. Finley, 74 Mo. App. 213, 1658
v. Fishblate, 83 N. C. 654, 213
v. Fiske, 9 R. I. 94, 282, 547, 1539
v. Fitts, 49 Ala. 402, 200
v. Fitzgerald, 44 Mo. 425, 1092
v. Fitzpatrick, 64 Mo. 185, 332
v. Flannigan, 67 Ind. 140, 1115
v. Fleetwood, 16 Mo. 448, 538
v. Fletcher, 39 Mo. 388, 1683
v. Floyd Co. Judge, 5 Iowa 380, 1526
v. Foley, 30 Minn. 350, 1522
v. Follet, 6 N. H. 53, 538
v. Folwell, 20 Atl. 1079, 1419
v. Forest Co., 74 Wis. 610, 54, 56, 423, 424
v. Forman, 50 La. An. 1022, 506
v. Forney, 21 Neb. 223, 429
v. Fosdick, 21 La. An. 434, 137
v. Foster, 7 N. J. L. 101, 301
v. Fountain, 14 Wash. 236, 528
v. Fox, 63 N. E. 19, 549
v. Francis, 88 Mo. 557, 1694
v. Francis, 95 Mo. 44, 69
v. Franklin, 40 Kan. 410, 1118
v. Frazier, 48 Ga. 137, 1714
v. Frazier, 28 Neb. 438, 1694
v. Freeman, 38 N. H. 426, 100, 500, 601
v. Frost, 103 Tenn. 685, 63
v. Froth, 34 N. J. L. 377, 1106
v. Fuller, 96 Mo. 165, 64
v. Fuller, 34 N. J. L. 227, 1234, 1266, 1268
v. Gaffney, 34 N. J. L. 133, 1546
v. Gallagher, 22 Minn. 449, 121
v. Gandy, 12 Neb. 232, 960
v. Garibaldi, 44 La. An. 809, 1403
v. Garroutte, 67 Mo. 445, 996
v. Gastinel, 20 La. An. 114, 378
v. Gates, 43 Conn. 533, 377
v. Gates, 35 Minn. 385, 380
v. Gayhart, 34 Neb. 192, 1673
v. George, 23 Fla. 585, 167, 185, 186
v. Georgia Medical Society, 38 Ga. 608, 97, 468, 494
v. Gilman, 33 W. Va. 146, 137
v. Gisch, 31 La. An. 544, 1403
v. Glasgow, N. C. Conf. 386, 213
v. Glavin, 67 Conn. 29, 504
v. Gleason, 12 Fla. 190, 1691
v. Glenn, 54 Md. 572, 541, 1413
v. Goetze, 22 Wis. 363, 349, 368
v. Goff, 15 R. I. 505, 198
v. Goldstucker, 40 Wis. 124, 151
v. Good, 41 N. J. L. 296, 368
State v. Goowin, 69 Tex. 55, 59, 93, 159, 288
v. Gordon, 60 Mo. 383, 496
v. Gorton, 33 Minn. 345, 1491
v. Gouldey, 52 N. J. L. 62, 163
v. Goulding, 44 N. H. 284, 538
v. Gouldy, 58 N. J. L. 562, 527
v. Grace, 20 Or. 154, 1654, 1680, 1682
v. Gracey, 11 Nev. 233, 1545
v. Graffmuller, 26 Minn. 6, 536
v. Graham, 21 Neb. 329, 1490
v. Grammer, 29 Ind. 530, 211, 324
v. Graves, 19 Md. 351, 522, 700, 1196
v. Gray, 93 Ind. 303, 1494
v. Gray, 23 Neb. 365, 164, 296, 475
v. Green, 15 N. J. L. 88, 187
v. Green, 37 Ohio St. 227, 161, 162, 293, 373, 473
v. Green Co., 54 Mo. 540, 986
v. Grimes, 49 Minn. 443, 526
v. Grimes, 50 Minn. 123, 607
v. Grimshaw, 1 S. W. 363, 1474, 1496
v. Grosvenor, 19 Neb. 494, 1491
v. Grubb, 85 Ind. 213, 1494
v. Guiney, 26 Minn. 313, 295
v. Gumber, 37 Wis. 298, 524
v. Gutierrez, 15 La. An. 190, 1413
v. Haben, 22 Wis. 660, 1538
v. Hadley, 27 Ind. 496, 313
v. Hagar, 91 Mo. 452, 949
v. Haines, 35 Or. 379, 82, 599
v. Hall, 97 N. C. 474, 213
v. Halsted, 39 N. J. L. 640, 699, 700
v. Hamilton, 40 Kan. 323, 446
v. Hamilton, 69 Miss. 116, 1492
v. Hammer, 42 N. J. L. 435, 557
v. Hammond, 40 Minn. 43, 617
v. Haney, 2 Dev. & B. 390, 539
v. Hanna, 97 Ind. 469, 706
v. Hannibal &c. R. Co., 75 Mo. 208, 623, 1520, 1545, 1547
v. Hansen, 20 Nev. 401, 1486
v. Hanson, 23 Tex. 232, 1105
v. Hardy, 7 Neb. 377, 487, 519
v. Harney, 57 Miss. 863, 312
v. Harper, 42 La. An. 312, 1399
v. Harper, 6 Ohio St. 607, 319
v. Harris, 50 Minn. 128, 602
v. Harris, 96 Mo. 29, 623
v. Harris, 19 Nev. 222, 1486
v. Harris, 17 Ohio St. 608, 1529
v. Harris, 52 Vt. 216, 351, 375, 376
v. Harrison, 67 Ind. 71, 274
v. Harrison, 113 Ind. 434, 168, 207
v. Harrison, 38 Mo. 540, 381
v. Harshaw, 73 Wis. 211, 435, 945
v. Harwi, 36 Kan. 588, 401
v. Haskell, 20 Iowa 276, 646
v. Hastings, 10 Wis. 518, 217, 1737
v. Hauser, 63 Ind. 155, 282, 285
v. Hauss, 43 Ind. 105, 199, 200
v. Hawes, 112 Ind. 323, 857, 889, 912
v. Hayes, 7 La. An. 118, 325, 326
v. Hayes, 61 N. H. 264, 467
v. Haynes, 72 Mo. 377, 279, 576
v. Haynes, 50 N. J. L. 97, 163, 954
v. Hays, 50 Mo. 578, 217
v. Heath, 20 La. An. 172, 663
v. Heidenhain, 42 La. An. 483, 608, 1093
v. Heidorn, 74 Mo. 410, 485
v. Heisey, 56 Iowa 404, 312
v. Helfrid, 2 N. & McC. 233, 1410
v. Henderson, 38 Ohio St. 644, 480
v. Herdt, 40 N. J. L. 264, 530
v. Herod, 29 Iowa 123, 1510
v. Herrmann, 75 Mo. 340, 113
v. Higgins, 76 Mo. App. 319, 1658

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

State v. Higgs, 126 N. C. 1014, 509, 1365, 1387
v. Hill, 54 Ala. 67, 773
v. Hill, 10 Ind. 219, 1559
v. Hill, 10 Neb. 58, 381
v. Hill, 126 N. C. 1139, 1387
v. Hinckle, 37 Ark. 532, 945
v. Hipp, 38 Ohio St. 199, 1509
v. Hobe, 106 Wis. 411, 1311
v. Hoff, 29 S. W. 672, 157
v. Hohn, 50 La. An. 432, 514
v. Holcomb, 68 Iowa 107, 1086
v. Holden, 19 Neb. 249, 403
v. Holmes, 43 La. An. 1185, 172
v. Hord, 122 N. C. 1092, 1388
v. Horn, 94 Mo. 162, 311
v. Horne, 115 N. C. 739, 599
v. Horton, 19 Nev. 199, 1486
v. Hotaling, 44 N. J. L. 347, 1233, 1546
v. Houston, 78 Ala. 576, 320
v. Howes, 112 Ind. 323, 863
v. Hoyt, 2 Or. 246, 301, 987
v. Hudson Co. Com'rs, 37 N. J. L. 12, 68
v. Hudson &c. R. Co., 38 N. J. L. 548, 637
v. Huggins, 47 Ind. 586, 1317
v. Huggins, Harp. L. 94, 156
v. Humphreys, 25 Ohio St. 520, 1535
v. Hunter, 38 Kan. 578, 1433
v. Hunter, 106 N. C. 796, 503
v. Hurff, 38 N. J. L. 310, 1485
v. Hutchins, 33 Neb. 335, 1475
v. Hutchinson, 60 Iowa 478, 324
v. Hutchinson, 39 N. J. Eq. 218, 1092
v. Hyman, 19 Ohio C. C. 622, 1768
v. Independent School Dist., 42 Minn. 357, 1473
v. Inhabitants &c., 37 Maine 451, 831, 1577, 1587
v. Inhabitants &c., 30 N. J. L. 137, 1112, 1577
v. Inhabitants &c., 36 N. J. L. 79, 617
v. Inhabitants &c., 36 N. J. L. 499, 645, 695
v. Inhabitants &c., 38 N. J. L. 95, 468
v. Inhabitants &c., 44 N. J. L. 610, 532
v. Inhabitants &c., 45 N. J. L. 318, 275, 276, 519, 528, 529, 534, 1447
v. Inhabitants &c., 49 N. J. L. 188, 1043
v. Inhabitants &c., 49 N. J. L. 401, 1301
v. Inhabitants &c., 51 N. J. L. 498, 496
v. Inhabitants &c., 52 N. J. L. 483, 194, 747
v. Inhabitants &c., 53 N. J. L. 132, 502, 598
v. Inhabitants &c., 54 N. J. L. 92, 584
v. Inhabitants &c., 58 N. J. L. 506, 465
v. Inhabitants &c., 60 N. J. L. 394, 795
v. Inhabitants &c., 60 N. J. L. 402, 514, 725
v. Ironton Gas Co., 37 Ohio St. 45, 6, 1406
v. Irvin, 126 N. C. 989, 506, 1389
v. Isabel, 40 La. An. 340, 1677
v. Itzkovitch, 49 La. An. 366, 1406
v. Jack, 90 Tenn. 614, 1074
v. Jackman, 69 N. H. 318, 493
v. Jacksonville St. R. Co., 29 Fla. 590, 1653
v. Jacobs, 17 Ohio 143, 171, 288, 429
State v. Jennings, 27 Ark. 419, 58, 90, 103
v. Jersey City, 1 Dutch. 536, 207
v. Johnson, 100 Ind. 489, 313
v. Johnson, 4 Wall. 475, 223
v. Jones, 19 Ind. 356, 349, 368, 1508
v. Jones, 155 Mo. 570, 1652
v. Jones, 18 Tex. 874, 1569
v. Judge &c., 13 Ala. 805, 378
v. Judge &c., 51 La. An. 1768, 592
v. Judges, 35 La. An. 1075, 204
v. Julian, 93 Ind. 292, 1483
v. Justice, 24 N. J. L. 413, 301
v. Justices &c., 4 Hawks 194, 213
v. Kantler, 33 Minn. 69, 274, 519, 521, 1405
v. Kavanagh, 24 Neb. 506, 1652
v. Kearns, 47 Ohio St. 566, 153, 163, 170, 199, 206
v. Keith, 94 N. C. 933, 497, 498
v. Keith Co., 16 Neb. 508, 981
v. Kempf, 69 Wis. 470, 380, 1692, 1694
v. Kennedy, 69 Conn. 220, 306
v. Kilroy, 86 Ind. 118, 1676
v. King, 37 Iowa 462, 537, 540, 1424
v. King, 34 Neb. 196, 1654
v. Kirk, 46 Conn. 395, 276, 297
v. Kirk, 44 Ind. 401, 185
v. Kirkley, 29 Md. 85, 516, 646
v. Kirkwood, 15 Wash. 298, 203
v. Knight, 31 S. C. 81, 1648
v. Knight, 82 Wis. 151, 901
v. Kraft, 18 Or. 550, 156, 380
v. Labatut, 39 La. An. 513, 495, 523
v. Laclede Gas-Light Co., 102 Mo. 472, 573
v. Lafayette Co. Court, 41 Mo. 221, 1649
v. Lambertville, 45 N. J. L. 282, 465
v. Lancaster, 63 N. H. 135, 137
v. Lane, 16 R. I. 620, 1487, 1688
v. Lane, 21 Atl. 302, 159, 170
v. Lanier, 31 La. An. 423, 320
v. Larkins, 44 S. C. 362, 541
v. Larrabee, 1 Wis. 200, 423
v. Lashar, 71 Conn. 540, 169
v. Laughton, 19 Nev. 202, 313
v. Laverack, 34 N. J. L. 201, 681
v. Leatherman, 38 Ark. 81, 49, 58, 65
v. Leaver, 62 Wis. 387, 582, 1322, 1369
v. Lee, 29 Minn. 445, 536, 541, 607, 1412
v. Leffingwell, 54 Mo. 458, 13, 14, 54, 55
v. Leverton, 53 Iowa 483, 1473
v. Lewis, 35 N. J. L. 377, 846
v. Lingo, 26 Mo. 496, 626
v. Litus, 47 N. J. L. 89, 1560
v. Lockett, 52 La. An. 1620, 1644
v. Lockwood, 43 Wis. 403, 1415
v. Logan, 43 N. J. L. 421, 645
v. Long, 8 Ired. L. 415, 328, 331
v. Long, 94 N. C. 896, 1556
v. Long Branch Com'rs, 42 N. J. L. 375, 1133
v. Long Branch Police &c. Com., 59 N. J. L. 371, 730
v. Longstreet, 38 N. J. L. 312, 706
v. Lowery, 49 N. J. L. 391, 499, 1081
v. Lucas, 9 Houst. 396, 1108
v. Ludwig, 21 Minn. 202, 1085
v. Macon Co. Court, 41 Mo. 453, 995
v. Macon Co. Court, 68 Mo. 29, 1524, 1542, 1646
v. Madison St. R. Co., 72 Wis. 612, 1812
v. Mahner, 43 La. An. 496, 508, 605

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

State v. Maniteau Co. Court, 45 Mo. App. 387, 1711
v. Mansfield, 41 Mo. 470, 1415
v. Marlow, 15 Ohio St. 114, 380
v. Martin, 27 Neb. 441, 190, 659, 920, 924
v. Mason, 43 La. An. 590, 1426
v. Mason, 153 Mo. 23, 926, 1793
v. Matheny, 7 Kan. 327, 187, 318
v. May, 22 Ark. 445, 1483
v. Mayhew, 2 Gill 487, 386, 1714
v. Mayor &c., 24 Ala. 701, 90, 92, 104
v. Mayor &c., 5 Port. 279, 681
v. Mayor &c., 22 Fla. 21, 960, 961, 1679, 1680
v. Mayor &c., R. M. Charl. 250, 89, 90, 103
v. Mayor &c., 28 La. An. 358, 917
v. Mayor &c., 30 La. An. 129, 1526, 1531
v. Mayor &c., 49 La. An. 1322, 1686
v. Mayor &c., 52 La. An. 1604, 1684
v. Mayor &c., 29 Md. 85, 646
v. Mayor &c., 73 Mo. 435, 94, 117
v. Mayor &c., 19 Mont. 518, 547, 718, 723, 731, 1684
v. Mayor &c., 32 Neb. 568, 1682
v. Mayor &c., 3 N. J. L. 57, 107
v. Mayor &c., 23 N. J. L. 280, 1507
v. Mayor &c., 25 N. J. L. 309, 273, 275, 277, 284, 1539
v. Mayor &c., 26 N. J. L. 399, 1132
v. Mayor &c., 26 N. J. L. 444, 282, 1533
v. Mayor &c., 27 N. J. L. 185, 1247, 1249, 1250, 1724
v. Mayor &c., 27 N. J. L. 493, 465
v. Mayor &c., 29 N. J. L. 104, 1254, 1724
v. Mayor &c., 29 N. J. L. 115, 645
v. Mayor &c., 29 N. J. L. 170, 100, 107, 543, 1093, 1110, 1117
v. Mayor &c., 29 N. J. L. 441, 707
v. Mayor &c., 29 N. J. L. 475, 481, 645, 1724
v. Mayor &c., 30 N. J. L. 93, 481
v. Mayor &c., 30 N. J. L. 303, 645, 1257
v. Mayor &c., 32 N. J. L. 49, 693, 1257, 1259, 1571
v. Mayor &c., 33 N. J. L. 57, 111, 494
v. Mayor &c., 34 N. J. L. 163, 281, 468, 552, 1539
v. Mayor &c., 34 N. J. L. 236, 468
v. Mayor &c., 34 N. J. L. 445, 1259
v. Mayor &c., 35 N. J. L. 157, 1512, 1545
v. Mayor &c., 35 N. J. L. 190, 1657
v. Mayor &c., 35 N. J. L. 381, 1724
v. Mayor &c., 36 N. J. L. 159, 645
v. Mayor &c., 36 N. J. L. 291, 1297
v. Mayor &c., 37 N. J. L. 348, 499
v. Mayor &c., 37 N. J. L. 415, 1197, 1257, 1271, 1297
v. Mayor &c., 38 N. J. L. 110, 479, 519
v. Mayor &c., 40 N. J. L. 186, 664
v. Mayor &c., 40 N. J. L. 257, 116
v. Mayor &c., 40 N. J. L. 550, 54, 55, 119
v. Mayor &c., 41 N. J. L. 71, 1388
v. Mayor &c., 44 N. J. L. 137, 368
v. Mayor &c., 45 N. J. L. 104, 1200
v. Mayor &c., 45 N. J. L. 482, 1233
v. Mayor &c., 46 N. J. L. 140, 168
v. Mayor &c., 47 N. J. L. 15, 1140
v. Mayor &c., 47 N. J. L. 117, 547
v. Mayor &c., 47 N. J. L. 286, 499, 519
v. Mayor &c., 47 N. J. L. 449, 893
State v. Mayor &c., 49 N. J. L. 308, 494, 626
v. Mayor &c., 49 N. J. L. 384, 1528
v. Mayor &c., 49 N. J. L. 515, 1689
v. Mayor &c., 51 N. J. L. 428, 1379
v. Mayor &c., 52 N. J. L. 65, 617, 1352
v. Mayor &c., 52 N. J. L. 88, 475
v. Mayor &c. 52 N. J. L. 332, 1657, 1666, 1682
v. Mayor &c., 53 N. J. L. 299, 1253
v. Mayor &c., 53 N. J. L. 544, 1437
v. Mayor &c., 54 N. J. L. 102, 584
v. Mayor &c., 54 N. J. L. 111, 486, 1156
v. Mayor &c., 54 N. J. L. 293, 587, 1050
v. Mayor &c., 54 N. J. L. 437, 614
v. Mayor &c., 54 N. J. L. 476, 592
v. Mayor &c., 55 N. J. L. 241, 877, 881
v. Mayor &c., 57 N. J. L. 252, 1315, 1365
v. Mayor &c., 57 N. J. L. 293, 1351
v. Mayor &c., 58 N. J. L. 262, 514, 723
v. Mayor &c., 62 N. J. L. 621, 1135, 1236
v. Mayor &c., 63 N. J. L. 61, 1273, 1283
v. Mayor &c., 63 N. J. L. 96, 186, 206
v. Mayor &c., 63 N. J. L. 148, 1828
v. Mayor &c., 63 N. J. L. 202, 1266, 1282, 1297
v. Mayor &c., 14 Ohio St. 472, 106, 449, 995, 1534
v. Mayor &c., 10 Rich. L. 491, 594, 983
v. Mayor &c., 12 Rich. 480, 1413
v. Mayor &c., 11 Humph. 217, 214
v. Mayor &c., 15 Lea 697, 176
v. Mayor &c., 10 Wash. 4, 203
v. Mayor &c., 71 Wis. 502, 1232
v. Mayor &c., 88 Wis. 599, 1240
v. Mayor &c., 101 Wis. 208, 1286
v. McCann, 21 Ohio St. 198, 1493
v. McCauley, 15 Cal. 429, 917
v. McClurg, 27 N. J. L. 253, 1724
v. McCormack, 50 Mo. 568, 323
v. McCoy, 116 N. C. 1059, 499
v. McCullough, 20 Nev. 154, 1694
v. McCurdy, 62 Minn. 509, 727
v. McDaniel, 78 Miss. 1, 329
v. McDonald, 26 Minn. 445, 697
v. McFadden, 23 Minn. 40, 434
v. McGovern, 100 Wis. 666, 66
v. McGrath, 91 Mo. 386, 753, 1687
v. McKee, 20 Or. 120, 298, 351
v. McMahon, 62 Minn. 110, 604
v. McMahon, 69 Minn. 265, 1387
v. McMillan, 108 Mo. 153, 376
v. McNinch, 87 N. C. 567, 606
v. McReynolds, 61 Mo. 203, 1515, 1517
v. Mead, 71 Mo. 266, 986
v. Meadows, 1 Kan. 90, 446
v. Medbery, 7 Ohio St. 522, 917
v. Medbury, 3 R. I. 138, 137, 138
v. Merrill, 37 Maine 329, 466, 601
v. Merriman, 6 Wis. 14, 423, 424
v. Merritt, 83 N. C. 677, 537, 606
v. Messolongitis, 74 Minn. 165, 519
v. Miller, 41 La. An. 53, 589, 1356
v. Miller, 66 Minn. 90, 1827, 1830
v. Miller, 30 N. J. L. 368, 115
v. Miller, 45 N. J. L. 251, 290, 1657
v. Mills, 29 Wis. 322, 700
v. Mills, 34 N. J. L. 177, 110
v. Milwaukee, 20 Wis. 87, 13
v. Minnesota &c. R. Co., 80 Minn. 108, 711, 733, 735, 746
v. Mitchell, 58 Iowa 567, 1566

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

State v. Mitchell, 31 Ohio St. 18, 55
v. Montgomery, 74 Ala. 226, 985
v. Moore, 19 Mo. 369, 332
v. Moore, 74 Mo. 413, 319
v. Moore, 54 N. J. L. 121, 1455
v. Moore, 104 N. C. 714, 600
v. Moores, 56 Neb. 1, 165
v. Morris, 47 La. An. 1660, 600
v. Morris, 14 Wash. 262, 381
v. Morse, 50 N. H. 9, 695, 1572
v. Morton, 27 Vt. 310, 539
v. Moss, 2 Jones 66, 1414
v. Mote, 48 Neb. 683, 60
v. Mott, 61 Md. 297, 502
v. Mullenhoff, 74 Iowa 271, 1677
v. Murphy, 130 Mo. 10, 1347
v. Murphy, 134 Mo. 548, 741, 1348
v. Murray, 41 Minn. 123, 153
v. Murray, 28 Wis. 96, 185
v. Mutchler, 41 N. J. L. 96, 1717, 1720
v. Namias, 49 La. An. 618, 1386
v. Natal, 39 La. An. 439, 91
v. Natal, 41 La. An. 887, 581
v. Neidt, 19 Atl. 318, 1124
v. Nelson, 41 Minn. 25, 1550
v. Nelson, 34 Neb. 162, 418
v. Nelson, 57 Wis. 147, 1257
v. Nevin, 19 Nev. 162, 319
v. Newark, 40 N. J. L. 550, 54, 55, 119
v. Newman, 96 Wis. 258, 520
v. New Orleans &c. R. Co., 52 La. An. 1570, 721, 726
v. Newton, 33 Ark. 276, 324
v. Noble, 20 La. An. 325, 541
v. Nolan, 37 Minn. 16, 1400
v. North, 42 Conn. 79, 1475
v. North, 27 Mo. 464, 1503, 1537
v. Norton, 63 Minn. 497, 1274
v. Noyes, 30 N. H. 279, 61, 83, 84
v. Noyes, 25 Nev. 31, 713
v. O'Brien, 47 Ohio St. 464, 380, 1690
v. Ocean Grove Camp Meeting, 59 N. J. L. 110, 550
v. O'Connor, 78 Wis. 282, 1169
v. O'Day, 69 Iowa 368, 152
v. Odom, 86 N. C. 432, 327
v. Oleson, 26 Minn. 507, 496, 607
v. Olinger, 109 Iowa 669, 173
v. O'Neill, 49 La. An. 1171, 1390, 1406
v. Orr, 68 Conn. 101, 740, 1386, 1388, 1797
v. Orr, 61 Ohio St. 384, 290
v. Orvis, 20 Wis. 235, 349, 368, 1508
v. Osawkee Tp., 14 Kan. 418, 549, 559, 979, 1050, 1060
v. Osborne, 36 Kan. 530, 446
v. Osborne, 32 Mo. App. 536, 1493
v. Owen, 50 La. An. 1181, 1387
v. Page, 140 Mo. 501, 186
v. Painter, 34 Neb. 173, 418
v. Pamperin, 42 Minn. 320, 598
v. Parker, 25 Minn. 215, 1689
v. Parker, 33 N. J. L. 313, 1502
v. Parker, 35 N. J. L. 575, 1724
v. Patterson &c. Co., 21 N. J. L. 9, 1693
v. Payssan, 47 La. An. 1029, 499, 600, 752
v. Peck, 53 Maine 284, 310
v. Pender, 66 N. C. 313, 1411
v. Pendergrass, 106 N. C. 664, 600, 1403
v. Penney, 10 Ark. 621, 133
v. Pepper, 31 Ind. 76, 310
v. Perkins, 24 N. J. L. 409, 187
v. Phillips, 79 Maine 506, 160, 302, 303
v. Pinto, 7 Ohio St. 355, 522
State v. Police Board &c., 51 La. An. 941, 1686
v. Police Com'rs, 16 Mo. App. 48, 1435
v. Police Com'rs &c., 80 Mo. App. 206, 1658, 1765
v. Police Jury, 34 La. An. 673, 1523
v. Porter, 7 Ind. 204, 313
v. Porter, 113 Ind. 79, 290, 292
v. Powell, 40 La. An. 234, 325, 326
v. Powell, 67 Mo. 395, 319
v. Powell, 97 N. C. 417, 1413, 1420
v. President &c., 2 Houst. 99, 1510
v. Priester, 43 Minn. 373, 476
v. Proctor, 90 Mo. 334, 1568
v. Proprietors &c., 46 N. J. L. 495, 685
v. Pugh, 43 Ohio St. 98, 55
v. Purse, 4 McCord 472, 1104, 1105
v. Randall, 35 Ohio St. 64, 381
v. Rathbun, 22 Wash. 651, 1311
v. Reckards, 21 Minn. 47, 537
v. Reis, 38 Minn. 371, 1165, 1232, 1234, 1268
v. Renick, 37 Mo. 270, 374, 473
v. Rhoades, 6 Nev. 352, 324
v. Rice, 97 N. C. 421, 507
v. Rich, 20 Mo. 393, 66, 70
v. Richmond, 26 N. H. 232, 697, 1573
v. Ricker, 32 N. H. 179, 1412
v. Ring, 29 Minn. 78, 313
v. Riordan, 24 Wis. 484, 54
v. Robb, 17 Ind. 536, 221
v. Roberts, 13 N. J. L. 132, 323
v. Robinson, 42 Minn. 107, 603, 1396
v. Robinson, 29 N. H. 274, 538
v. Roderick, 23 Neb. 505, 1670
v. Rodman, 43 Mo. 256, 381
v. Rogers, 86 N. C. 357, 155
v. Rogers, 22 Or. 348, 879
v. Roggen, 22 Neb. 118, 988
v. Rowe, 72 Md. 548, 98, 622
v. Ruff, 30 La. An. 497, 531
v. St. John, 47 Minn. 315, 1574
v. St. Louis Co. Court, 47 Mo. 595, 1724
v. St. Louis Police Comm., 16 Mo. App. 48, 200
v. St. Paul &c. R. Co., 35 Minn. 131, 592
v. St. Paul &c. R. Co., 78 Minn. 331, 735
v. Saline Co., 45 Mo. 242, 1010
v. Saline Co. Court, 48 Mo. 390, 1001
v. Sappington, 67 Mo. 529, 327
v. Saxon, 25 Fla. 792, 1645
v. Scates, 43 Kan. 330, 935
v. School Dist., 10 Neb. 544, 986
v. School Dist., 21 Neb. 725, 1477, 1485
v. School Dist., 22 Neb. 48, 1482
v. School Dist., 30 Neb. 520, 1654
v. School Dist., 31 Neb. 552, 1481, 1493, 1670
v. Schuchardt, 42 La. An. 49, 594, 619, 1392
v. Scott, 17 Mo. 521, 58, 61
v. Seavey, 22 Neb. 454, 1433, 1434
v. Severance, 49 Mo. 401, 517
v. Severance, 55 Mo. 378, 115
v. Seymour, 35 N. J. L. 47, 1432
v. Shakspeare, 43 La. An. 92, 1645, 1658
v. Shay, 101 Ind. 36, 1694
v. Sheppard, 64 Minn. 289, 1316
v. Sheriff &c., 48 Minn. 236, 558
v. Sherrard, 117 N. C. 716, 499
v. Shropshire, 4 Neb. 411, 1652
v. Sickles, 24 N. J. L. 125, 1540
v. Simon, 20 Or. 365, 167
v. Simons, 32 Minn. 540, 58
v. Sims, 16 S. C. 486, 1433

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

State v. Sinks, 42 Ohio St. 345, 1509
v. Skirving, 19 Neb. 497, 349, 368
v. Slocum, 34 Neb. 368, 940, 1660
v. Sly, 4 Or. 277, 541
v. Smith, 67 Conn. 541, 1388
v. Smith, 72 Conn. 572, 203
v. Smith, 22 Minn. 218, 273, 275, 276, 479
v. Smith, 26 Mo. 226, 325
v. Smith, 46 Mo. 60, 401
v. Smith, 87 Mo. 158, 945
v. Smith, 89 Mo. 408, 933
v. Smith, 104 Mo. 661, 1647
v. Smith, 31 Neb. 590, 1646
v. Smith, 100 N. C. 550, 1556
v. Smith, 25 Pac. 389, 351
v. Smith, 19 Wash. 644, 1820
v. Smith, 11 Wis. 65, 378, 1527
v. Smith, 14 Wis. 497, 185
v. Smith, 52 Wis. 134, 542
v. Snodgrass, 1 Wash. 305, 374
v. Somers, 96 N. C. 467, 198
v. Sooy, 39 N. J. L. 135, 321
v. Sovereign, 17 Neb. 173, 911
v. Spaude, 37 Minn. 322, 108, 109
v. Spidel, 44 Kan. 439, 943
v. Stanley, 66 N. C. 59, 187
v. Stark, 18 Fla. 255, 54, 449
v. Starkey, 49 Minn. 503, 468
v. State Board &c., 18 Nev. 173, 1478
v. Staten, 6 Coldw. 233, 369
v. Staub, 61 Conn. 553, 1488
v. Stearns, 11 Neb. 104, 1652
v. Stearns, 31 N. H. 106, 536
v. Steen, 43 N. J. L. 542, 119
v. Steers, 44 Mo. 223, 381
v. Sterling, 20 Md. 502, 386
v. Stevens, 21 Kan. 210, 124, 125
v. Stevens, 40 Maine 559, 1105
v. Stewart, 74 Wis. 620, 1084, 1178
v. Stovall, 103 N. C. 416, 601
v. Strader, 25 Ohio St. 527, 1535
v. Strong, 47 S. W. 1103, 1554
v. Stroud, 52 S. W. 697, 585
v. Stumpf, 21 Wis. 579, 152
v. Sullivan, 36 N. J. L. 89, 846
v. Sullivan Co. Court, 51 Mo. 522, 995, 996
v. Summerfield, 107 N. C. 895, 600
v. Superior Court &c., 105 Wis. 651, 514, 1703
v. Supervisors &c., 23 Minn. 521, 340, 341, 345
v. Supervisors &c., 20 Wis. 80, 1527
v. Supervisors, 58 Wis. 291, 340
v. Sutterfield, 54 Mo. 391, 374
v. Sweeney, 103 Wis. 404, 1764
v. Symonds, 57 Maine 148, 369
v. Taff, 37 Conn. 392, 367
v. Taft, 118 N. C. 1190, 504
v. Tappan, 29 Wis. 664, 610, 979
v. Taxing Dist. &c., 16 Lea 240, 607
v. Taylor, 29 Ind. 517, 1104, 1105
v. Taylor, 26 Neb. 580, 154
v. Taylor, 108 N. C. 196, 195, 196
v. Tenant, 110 N. C. 609, 503, 504
v. Tenny, 58 S. C. 215, 1311
v. Thayer, 74 Wis. 48, 1492
v. Thompson, 49 Mo. 188, 311
v. Tiedmann, 69 Mo. 515, 1480
v. Timme, 54 Wis. 318, 419
v. Titus, 47 N. J. L. 89, 1577
v. Tool, 4 Ohio St. 553, 312
v. Toomer, 7 Rich. L. 216, 313
v. Towers, 71 Conn. 657, 1688
v. Towle, 103 Wis. 388, 1764
v. Town Council &c., Rice 158, 534
v. Town Council &c., 6 Rich. L. 404, 532, 534
State v. Town of Baird, 79 Tex. 63, 60
v. Town of Belvidere, 44 N. J. L. 350, 99, 1148
v. Town of Bergen, 33 N. J. L. 39, 465, 476
v. Town of Burlington, 36 Vt. 521, 831
v. Town of Compton, 2 N. H. 513, 831
v. Town of Guttenberg, 38 N. J. L. 419, 1523
v. Town of Harrison, 46 N. J. L. 79, 1447
v. Town of Hoboken, 53 N. J. L. 64, 1140
v. Town of Maysville, 12 S. C. 76, 1523, 1533
v. Town of Somerset, 44 Minn. 549, 1651
v. Town of Tipton, 109 Ind. 73, 65
v. Town of Union, 32 N. J. L. 343, 1421
v. Town of Union, 33 N. J. L. 350, 426, 468
v. Town of Vershire, 52 Vt. 41, 351
v. Town of West Hoboken, 43 Atl. 535, 1241
v. Town of Winter Park, 25 Fla. 371, 64, 1769
v. Town of Wittingham, 7 Vt. 390, 831
v. Township Board &c., 19 Ohio C. C. 574, 1652
v. Tracy, 48 Minn. 497, 1693
v. Trask, 6 Vt. 355, 1559
v. Treasurer &c., 43 Mo. 228, 960
v. Treasurer &c., 43 N. J. L. 139, 1415
v. Treasurer &c., 44 N. J. L. 350, 500, 501
v. Treasurer &c., 45 N. J. L. 288, 519, 528, 536
v. Treasurer &c., 53 N. J. L. 329, 507, 527, 528
v. Trimbell, 12 Wash. 440, 1684
v. Troth, 34 N. J. L. 377, 90, 103
v. Trustees &c., 5 Ind. 77, 445
v. Trustees &c., 43 N. J. L. 358, 1485
v. Trustees &c., 49 N. J. L. 607, 374, 1486
v. Trustees &c., 52 N. J. L. 104, 362
v. Trustees &c., 8 Ohio St. 394, 1002
v. Trustees &c., 14 Ohio St. 569, 983, 1002
v. Trustees &c., 22 Ohio St. 288, 291
v. Tryon, 39 Conn. 183, 466
v. Tufly, 19 Nev. 391, 151
v. Tunis, 23 N. J. L. 546, 1511
v. Turney, 8 Gill & J. 125, 323
v. Tuttle, 53 Wis. 45, 369, 370
v. Tyler, 48 Conn. 145, 859
v. Union Dist. School Trustees, 46 N. J. L. 76, 1493
v. Vail, 53 Mo. 97, 378
v. Vallel, 41 Mo. 29, 783
v. Vallius, 140 Mo. 523, 164
v. Van Buskirk, 40 N. J. L. 463, 301, 303
v. Van Horne, 7 Ohio St. 327, 1002
v. Vanosdal, 131 Ind. 388, 274, 291
v. Van Pelt, 1 Ind. 304, 322
v. Van Winkle, 25 N. J. L. 73, 1422, 1423
v. Van Wyck, 20 Wash. 39, 953
v. Varnum, 81 Wis. 593, 1568, 1656
v. Vickers, 51 N. J. L. 180, 1693
v. Village of Bradford, 32 Vt. 50, 1693

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

State v. Village of Reads, 78 N. W. 883, 117
v. Village of South Orange, 49 N. J. L. 104, 1255
v. Votaw, 8 Blackf. 2, 419
v. Vreeland, 79 Iowa 466, 1486
v. Waddell, 49 Minn. 500, 578, 1345
v. Wadhams, 64 Minn. 318, 171
v. Waggoner, 88 Tenn. 290, 446
v. Wakely, 2 Nott & McC. 410, 1725
v. Waldron, 17 N. J. L. 369, 700
v. Walker, 85 Mo. 41, 638
v. Walker, 17 Ohio 135, 428
v. Walker, 7 Cent. L. J. 390, 1646
v. Wall, 47 Ohio St. 499, 113
v. Walsh, 70 Mo. App. 142, 378
v. Wapello Co., 13 Iowa 405, 979
v. Wapello Co., 13 Iowa 388, 983
v. Wardell, 153 Mo. 319, 1549
v. Ware, 13 Or. 380, 339
v. Water Com'rs, 30 N. J. L. 247, 645
v. Watts, 23 Ark. 304, 323, 327
v. Webber, 107 N. C. 962, 503, 520, 606
v. Weir, 33 Iowa 134, 69
v. Welch, 36 Conn. 215, 497, 601
v. Wells, 46 Iowa 662, 1415, 1417
v. Wells, 8 Nev. 105, 168
v. West, 33 La. An. 1261, 198
v. West Duluth Land Co., 75 Minn. 456, 551, 1033
v. Western Union Tel. Co., 73 Maine 518, 1177
v. Wharton, 103 Wis. 307, 880
v. Wheeler, 27 Minn. 76, 1400
v. White, 29 Neb. 288, 921, 1664, 1670
v. White, 10 Rich. L. 442, 328
v. Whitford, 54 Wis. 150, 1472
v. Whittemore, 50 N. H. 245, 133
v. Wilcox, 42 Conn. 364, 84
v. Wilcox, 45 Mo. 458, 58, 61
v. Wilcox, 17 Neb. 219, 1670
v. Wilkinson, 2 Vt. 480, 1556
v. Williams, 25 Maine 561, 347, 348, 367
v. Williams, 30 N. J. L. 102, 1105
v. Williams, 11 S. C. 288, 601, 607
v. Williams, 6 S. D. 119, 184, 209
v. Williams, 5 Wis. 308, 195, 369
v. Williamson, 44 N. J. L. 165, 106
v. Wilmington, 3 Harr. 294, 189, 373
v. Wilson, 42 Maine 9, 1373
v. Wilson, 24 Neb. 139, 381
v. Wilson, 29 Ohio St. 347, 177
v. Wilson, 12 Lea 290, 446
v. Winter, 148 Ind. 177, 157
v. Winter, 15 Wash. 407, 551, 612
v. Wish, 15 Neb. 448, 524
v. Witter, 107 N. C. 792, 1400
v. Wolever, 127 Ind. 306, 189, 220
v. Woodbury, 76 Maine 457, 60
v. Woodruff, 37 N. J. L. 139, 1534
v. Woodward, 89 Ind. 110, 1677
v. Woodward, 23 Vt. 92, 1105
v. Wordin, 56 Conn. 216, 1078
v. Wright, 8 Blackf. 65, 1475
v. Wright, 54 N. J. L. 130, 584
v. Wright, 56 Ohio St. 540, 168
v. Wright, 80 Wis. 648, 1420
v. Yates, 19 Mont. 239, 290, 297
v. Young, 3 Kan. 445, 47, 65, 88, 1410
v. Young, 17 Kan. 414, 110
v. Zeigler, 32 N. J. L. 262, 507, 527, 536
v. Zeno, 79 Minn. 80, 1388
v. Zurich, 49 La. An. 447, 1391
State Bank v. City Council, 3 Rich. L. 343, 1511
State Bank v. City of Madison, 3 Ind. 43, 1510, 1511
v. Curran, 10 Ark. 142, 198
v. Gibbs, 3 McCord 377, 7
v. Knoop, 16 How. 369, 75
State Board &c. v. Aberdeen, 56 Miss. 518, 240
v. Citizens' St. R. Co., 47 Ind. 407, 649
State &c. Co. v. Commonwealth Ins. &c. Co., 39 Minn. 219, 1379
State Railroad Tax Cases, 92 U. S. 575, 1697, 1708, 1717, 1720, 1721
State Sav. Bank v. Davis, 22 Wash. 406, 1685
State Warrants, In re, 6 S. D. 518, 876
Steamship Co. v. Port Wardens, 6 Wall. 31, 580
Stearns v. City of Richmond, 88 Va. 992, 1602
v. Village of Wyoming, 53 Ohio St. 352, 381
Stebbins v. Jennings, 10 Pick. 172, 50, 51, 662
v. Kay, 4 N. Y. S. 566; 51 Hun 589, 1255, 1268
v. Mayer, 38 Kan. 573, 489, 1446
v. Merritt, 10 Cush. 27, 1421
v. Village of Oneida, 5 N. Y. S. 483; 23 N. Y. St. 702, 826, 1616, 1625
Steckert v. City of East Saginaw, 22 Mich. 104, 291, 299, 300, 477, 1421
Steckman v. Brooks, 17 Colo. 248, 1430
Stedman v. City of Rome, 34 N. Y. S. 737, 1335
Steel v. Borough of Huntington, 191 Pa. St. 627, 1315
Steele's Petition, 44 N. H. 220, 1573
v. Calhoun, 61 Miss. 556, 158, 372
v. City of Boston, 128 Mass. 583, 263, 803
Steele Co. v. Erskine, 98 Fed. 215, 644
Steenberg v. People, 164 Ill. 478, 1278
Steffan v. City of Buffalo, 21 N. Y. W. Dig. 289, 826
Steffen v. City of St. Louis, 135 Mo. 44, 1306
Stehmeyer v. City Council, 53 S. C. 259, 1449, 1554
Stein v. Bienville Water &c. Co., 34 Fed. 145, 567
v. Bienville Water &c. Co., 141 U. S. 67, 1810
v. City of Council Bluffs, 72 Iowa 180, 1619
v. Mayor &c., 17 Ala. 234, 1511, 1512
v. Mayor &c., 24 Ala. 591, 983, 1511, 1546
v. Mayor &c., 49 Ala. 362, 1512
Steines v. Franklin Co., 48 Mo. 167, 986, 1001
Steinmeyer v. City of St. Louis, 3 Mo. App. 256, 1585
Steinmuller v. City of Kansas City, 3 Kan. App. 45, 1136, 1701
Stephan v. Daniels, 27 Ohio St. 527, 1550, 1552
Stephani v. City of Manitowoc, 89 Wis. 467, 790
Stephens v. City of Macon, 83 Mo. 345, 1618
v. City of Spokane, 14 Wash. 298, 1306
v. Felton, 99 Ky. 395, 13
v. Mayor &c., 84 Ga. 630, 370, 371
v. Murray, 132 Mo. 468, 609
Sterling v. Parish of West Feliciana, 26 La. An. 59, 636
v. Thomas, 60 Ill. 265, 8
Sterling Gas Co. v. Higby, 134 Ill. 557, 840

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Stern v. People, 96 Ill. 475, 322
Stetson v. Chicago &c. R. Co., 75 Ill. 74, 1706
v. Kempton, 13 Mass. 272, 15, 251, 647, 668, 867, 1532, 1542
Steuart v. Mayor &c., 7 Md. 500, 699, 705, 1196
Steubenville v. Culp, 38 Ohio St. 18, 213
Steven v. Nebraska &c. Ins. Co., 29 Neb. 187, 1419
Stevens v. Borough of Danbury, 53 Conn. 9, 699
v. City of Muskegon, 111 Mich. 72, 1812
v. Commonwealth, 6 Met. 241, 539
v. Dudley, 56 Vt. 158, 223
v. Eden &c. Soc., 12 Vt. 688, 1425
v. Patterson &c. R. Co., 34 N. J. L. 532, 1378
v. Rutland &c. R. Co., 29 Vt. 546, 651
v. St. Mary's Training School, 144 Ill. 336, 1701, 1759
v. Truman, 127 Cal. 155, 953
Stevenson v. Bay City, 26 Mich. 44, 491, 1421
v. District Tp., 35 Iowa 462, 1528
v. Missouri &c. R. Co., 31 S. W. 793, 1350
v. Weber, 29 La. An. 105, 651
Stevens Point &c. Co. v. Reilly, 44 Wis. 295, 54
Steward v. Jefferson, 3 Harr. 335, 58
Stewart v. Board &c., 30 Iowa 1, 983
v. Board &c., 45 Kan. 708, 1225
v. Cambridge, 125 Mass. 102, 260
v. City of Clinton, 79 Mo. 603, 491, 1426
v. City of Council Bluffs, 58 Iowa 642, 285
v. City of Council Bluffs, 84 Iowa 61, 1221
v. City of Nashville, 96 Tenn. 50, 1326
v. Lee, 3 Cal. 364, 309
v. Otoe Co., 2 Neb. 177, 632
v. Philadelphia, 7 Atl. 192, 1271
v. Sherman, 4 Conn. 553, 1060
v. Southard, 17 Ohio 402, 221, 222, 1494
v. State, 4 Ind. 396, 168
Stickley v. Chesapeake &c. R. Co., 93 Ky. 323, 1554
Stickney v. City of Salem, 3 Allen 374, 1595, 1601
v. Village of Bangor, 30 Maine 404, 1727
Stidger v. City of Red Oak, 64 Iowa 465, 233
Stifel v. Brown, 24 Mo. App. 102, 1273
Stiffler v. Board &c., 1 Ind. App. 368, 945
Stiles v. Town of Middlesex, 8 Vt. 436, 699
Still v. Trustees &c., 16 Barb. 107, 629
Stillwater v. Green, 9 N. J. L. 59, 430
Stillwater Water Co. v. City of Stillwater, 50 Minn. 498, 587
Stillwell v. Coons, 122 N. Y. 242, 1050
v. Kennedy, 51 Hun 114, 1050
v. Mayor &c., 19 Abb. Pr. 376, 763
v. Mayor &c., 17 J. & Sp. 360, 830
Stilwell v. Coope, 4 Den. 225, 1488
Stilz v. City of Indianapolis, 55 Ind. 515, 384, 1518
v. City of Indianapolis, 81 Ind. 582, 1519, 1717
Stinchfield v. Little, 1 Greenl. 231, 216
Stine v. Berry, 96 Ky. 63, 381
Stinson v. City of Gardiner, 42 Maine 248, 1595
v. Smith, 8 Minn. 366, 1165
Stirling v. City of Camden, 65 N. J. L. 190, 1406
Stockdale v. Wayland School Dist., 47 Mich. 226, 304
Stockton, Ex parte, 33 Fed. 95, 1399
v. Powell, 29 Fla. 1, 273, 570, 1014
Stockton &c. R. Co. v. Common Council &c., 41 Cal. 147, 685, 983
v. City of Stockton, 51 Cal. 328, 990
Stockwell v. State, 101 Ind. 1, 1487
v. White Lake Tp., 22 Mich. 341, 861
Stoddard v. Gilman, 22 Vt. 568, 301, 305, 345, 356
v. Inhabitants &c., 154 Mass. 149, 1585
v. Johnson, 75 Ind. 20, 277
v. Kimball, 6 Cush. 469, 1019
v. Village of Saratoga Springs, 52 Hun 610, 1179
Stodler v. Fahey, 87 Ill. App. 411, 173
Stokes v. Corporation of New York, 14 Wend. 87, 535, 601
v. Early, 45 N. J. L. 478, 706
Stone v. Bank of Commerce, 174 U. S. 412, 646, 1713, 1719
v. City of Boston, 2 Met. 220, 707
v. City of Cambridge, 6 Cush. 270, 1259
v. City of Charlestown, 114 Mass. 214, 387, 1519
v. City of Poughkeepsie, 44 N. Y. S. 609, 1344
v. Commercial R. Co., 4 M. & C. 122, 699
v. Elliott, 11 Ohio St. 252, 1026
v. Godfrey, 5 De G., M. & G. 76, 249
v. Inhabitants &c., 8 Cush. 592, 340, 1485
v. Inhabitants &c., 100 Mass. 49, 1332, 1626
v. Mayor &c., 25 Wend. 157, 802
v. Mississippi, 101 U. S. 814, 1390, 1677, 1811
v. Seymour, 15 Wend. 19, 325
v. Small, 54 Vt. 498, 354
v. Viele, 38 Ohio St. 314, 1724
v. Woodbury Co., 51 Iowa 522, 1726
Stoneham v. London &c. R. Co., L. R. 7 Q. B. 1, 1571
Stoner v. Flournoy, 28 La. An. 850, 1516, 1518
Storrie v. Cortes, 90 Tex. 283, 1302
Storrs v. City of Grand Rapids, 110 Mich. 483, 1786
v. City of Utica, 17 N. Y. 104, 745, 1546, 1590
Story v. New York &c. R. Co., 90 N. Y. 122, 620, 682, 1563, 1564, 1582
Stout v. Chosen Freeholders, 25 N. J. L. 202, 684
v. Woods, 79 Ind. 108, 1572
Stoutenburgh v. Hennick, 129 U. S. 141, 13, 46, 48, 1399
Stow v. Common Council, 79 Mich. 595, 163
v. Nyse, 7 Conn. 214, 275, 733
Stowers v. Gilbert, 156 N. Y. 600, 1773
Stoystown &c. Co. v. Craver, 45 Pa. St. 386, 1212
Strack v. Ratterman, 18 Ohio C. C. 36, 748
Strahan v. Town of Malvern, 77 Iowa 454, 615
Stratman, In re, 39 Cal. 517, 1411
Stratton v. City of Oregon, 35 Or. 409, 1033
v. Commonwealth, 10 Met. 217, 707

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Strauder v. West Virginia, 100 U. S. 303, 140
Strauss v. City of Cincinnati, 23 Wk. Law Bul. 359, 1255
v. Mayor &c., 97 Ga. 475, 499
Streator v. Chrisman, 82 Ill. App. 24, 1360
Street v. Board &c., 70 N. C. 644, 883
v. Laurens, 5 Rich. Eq. 227, 322
Street R. Co. v. West Side R. Co., 48 Mich. 433, 1352
Strenny v. City Council &c., 86 Ala. 340, 1287
Strickland v. City of Stillwater, 63 Minn. 43, 1305
v. Giede, 31 Or. 373, 879
Strickler v. City of Colorado Springs, 16 Colo. 61, 674
Strieb v. Cox, 111 Ind. 299, 632, 889, 947, 1201
Strike v. Collins, 54 L. T. 152, 1403
Striker v. Kelly, 7 Hill 9, 299, 476, 480, 1421
Strobel v. City of New York, 36 N. Y. S. 814, 1336
Strom v. City of Iowa City, 47 Iowa 42, 1730
Strong, Petitioner, 20 Pick. 484, 1688, 1692
v. Campbell, 11 Barb. 135, 225
v. City of Brooklyn, 68 N. Y. 1, 1564
v. City of Stevens Point, 62 Wis. 255, 1595
v. District of Columbia, 4 Mackey 242, 280, 715
v. Makeever, 102 Ind. 578, 1567
v. United States, 6 Wall. 788, 318
Strosser v. City of Fort Wayne, 100 Ind. 443, 401, 647, 1769
Stroud v. City of Philadelphia, 61 Pa. St. 255, 593, 1234
Strough v. Supervisors of Jefferson, 119 N. Y. 212, 1678
Strudgeon v. Village of Sand Beach, 107 Mich. 496, 1336, 1786
Strunk v. Ocheltree, 11 Iowa 158, 332
Strusburg v. Mayor &c., 87 N. Y. 452, 1198, 1202, 1205, 1264, 1551
Struthers v. Railway Co., 87 Pa. St. 282, 591
Stryker v. Skellman, 14 N. J. L. 189, 1765
Stuart v. Inhabitants &c., 48 Maine 477, 1641
v. Palmer, 74 N. Y. 183, 595, 692, 1237, 1238, 1242
v. School Dist. &c., 30 Mich. 69, 1730
v. Town of Warren, 37 Conn. 225, 347, 360
Stubbs v. Lee, 64 Maine 195, 198
Studabaker v. Studabaker, 152 Ind. 89, 1792
Studeor v. Village of Gouverneur, 44 N. Y. S. 122, 1364
Stuhr v. Mayor &c., 47 N. J. L. 147, 484
Sturgeon v. Hampton, 88 Mo. 203, 638
Sturm v. School Dist., 45 Minn. 88, 343, 1485
Sturtevant v. City of Alton, 3 McLean 393, 977
Stutsman Co. v. Mansfield, 5 Dak. 78, 902
Stuyvesant v. Mayor, 7 Cow. 588, 97, 468, 1256
Sublett v. Bedwell, 47 Miss. 266, 378
Suburban Elec. Co. v. City of Elizabeth, 59 N. J. L. 134, 925
Suburban Elec. &c. Co. v. Inhabitants of E. O. Tp., 41 Atl. 865, 1811
Suburban Elec. &c. Co. v. Town of Hempstead, 38 App. Div. 355, 735
Suburban &c. Transit Co. v. Mayor, 128 N. Y. 510, 582
Suffolk Sav. Bank v. City of Boston, 149 Mass. 364, 1026
Sullivan, Matter of, 28 N. Y. St. 566, 55 Hun 285, 1649, 1659
v. Board &c., 58 Miss. 790, 674
v. City of Boston, 126 Mass. 540, 803
v. City of Leadville, 11 Colo. 483, 299, 729, 923, 1193
v. Gilroy, 8 N. Y. S. 401, 1659
v. Holyoke, 135 Mass. 273, 815, 1159
v. Jones, 2 Gray 570, 335
v. Pausch, 5 Ohio C. C. 196, 299
v. School Dist., 39 Kan. 347, 258, 1480
v. Shanklin, 63 Cal. 247, 224
v. State, 121 Ind. 342, 854
v. Walton, 20 Fla. 552, 1021, 1540
Summers v. Board &c., 103 Ind. 262, 210, 774, 797, 1076
Sunapee v. Lempster, 65 N. H. 655, 1046
Sunderland v. Martin, 113 Ind. 411, 1287
Sun Printing &c. Ass'n v. Mayor &c., 152 N. Y. 257, 872
v. Mayor &c., 40 N. Y. S. 607, 711
Superintendents &c. v. Nelson, 75 Mich. 154, 1067
Supervisors &c. v. Bates, 17 N. Y. 242, 253
v. Birdsall, 4 Wend. 453, 662
v. Cook, 38 Ill. 44, 1023
v. Dorr, 25 Wend. 440, 320
v. Durant, 9 Wall. 415, 1527
v. Galbraith, 99 U. S. 214, 995, 1001, 1016, 1018
v. Horton, 75 Iowa 271, 275, 276, 277, 301, 302, 732
v. Minturn, 4 W. Va. 300, 1651
v. Morgan, 4 Abb. Ct. App. Dec. 335, 1056
v. O'Malley, 47 Wis. 332, 409, 450
v. People, 25 Ill. 163, 299
v. Schenck, 5 Wall. 772, 257, 992, 998, 1001, 1002, 1018, 1023
v. Stimson, 4 Hill 136, 192, 193, 198
v. Supervisors &c., 74 Mich. 721, 433, 434
v. Supervisors &c., 58 Miss. 619, 434
v. Supervisors &c., 13 Wis. 490, 423
v. United States, 4 Wall. 435, 8, 847, 1201, 1527, 1531
v. United States, 18 Wall. 71, 846, 1542, 1646
v. Van Campen, 3 Wend. 49, 309
v. Wisconsin R. &c. Co., 121 Mass. 460, 990
Surget v. Newman, 43 La. An. 873, 1426
Surgi v. Snetchman, 11 La. An. 387, 1520
Susquehanna Bank v. Board &c., 25 N. Y. 312, 1287, 1717
Sutliff v. Lake Co., 47 Fed. 106, 887
v. Lake Co., 147 U. S. 230, 998, 1003, 1008, 1009
Sutphen v. Town of North Hempstead, 80 Hun 409, 1374
Sutro v. Pettit, 74 Cal. 332, 210, 233, 234, 235, 236, 237, 250
v. Rhodes, 92 Cal. 117, 886
Sutton v. City of Louisville, 5 Dana 28, 704

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Sutton v. City of Snohomish, 11 Wash. 24, 1316, 1331, 1335, 1347
v. Clarke, 6 Taunt. 29, 225
v. McConnell, 46 Wis. 269, 536
v. School City of Montpelier, 28 Ind. App. 315, 1244
v. Spectacle Makers' Co., 10 L. T. 411, 261
Sutton's Hospital Case, 10 Co. 1, 38
Swain v. Comstock, 18 Wis. 486, 64
Swan v. Gray, 44 Miss. 393, 1672
v. Mayor &c., 8 Gill 150, 1724
v. Williams, 2 Mich. 427, 692
Swann v. Burk, 40 Miss. 268, 106, 183
Swart v. Mayor &c., 5 N. Y. S. 98, 1636
Swarth v. People, 109 Ill. 621, 1404
Swartwood v. Walbridge, 10 N. Y. S. 862, 1492
Swartz v. Large, 47 Kan. 314, 1690
Sweany v. Kansas City R. Co., 54 Mo. App. 265, 1251
Sweatt v. Faville, 23 Iowa 321, 556
Sweeny v. City of Butte, 15 Mont. 274, 1336, 1340
Sweet v. Buffalo &c. R. Co., 79 N. Y. 293, 1168
v. City of Buffalo, 158 N. Y. 695, 929
v. Village of Gloverville, 12 Hun 302, 1615
Sweetser v. Hay, 2 Gray 49, 311
Sweitzer v. Liberty, 82 Mo. 309, 483
Swenson v. City of Lexington, 69 Mo. 157, 264
Swepston v. Barton, 39 Ark. 549, 155
Swift v. City of Newport, 7 Bush 37, 1515, 1516, 1517
v. City of Poughkeepsie, 37 N. Y. 511, 229, 1205
v. City of Topeka, 43 Kan. 671, 517
v. Klein, 163 Ill. 269, 515
v. Mayor &c., 83 N. Y. 528, 788
Swindell v. State, 143 Ind. 153, 477, 499, 525
Switzer v. City of Wellington, 40 Kan. 250, 1744
Sykes v. City of St. Cloud, 60 Minn. 442, 720
v. Mayor &c., 55 Miss. 115, 643, 994, 1524
v. Town of Pawlet, 43 Vt. 446, 1597
Sylvester v. Incorporated Town of Casey, 110 Iowa 256, 1797, 1802
Sylvester Coal Co. v. City of St. Louis, 130 Mo. 323, 599, 1703
Syme v. Bunting, 91 N. C. 48, 327
Symonds v. Clay Co., 71 Ill. 355, 9, 142, 772
Symons v. City of San Francisco, 115 Cal. 555, 1318
Syracuse Water Co. v. City of Syracuse, 116 N. Y. 167, 233, 566, 567, 568, 618

T

Taber v. Ferguson, 109 Ind. 227, 1150, 1191
v. Grafmiller, 109 Ind. 206, 1259
Tacoma Gas &c. Co. v. City of Tacoma, 14 Wash. 288, 110, 573
Tacoma Land Co. v. City of Tacoma, 15 Wash. 133, 1286
Tacoma Light &c. Co. v. City of Tacoma, 13 Wash. 115, 718
Taft v. Gifford, 13 Met. 187, 320
v. Inhabitants &c., 14 Mass. 282, 644, 1212
v. Town of Pittsford, 28 Vt. 286, 260, 646
Taft v. Wood, 14 Pick. 362, 230, 1533
Taggart v. Detroit, 71 Mich. 92, 1403
v. Newport St. R. Co., 16 R. I. 668, 682, 683
Tainter v. City of Worcester, 123 Mass. 311, 263, 786
v. Lucas, 29 Wis. 375, 1720
v. Mayor &c., 19 N. J. Eq. 46, 1106
Tait's Ex'r v. Central Lunatic Asylum, 84 Va. 271, 685
Talbot v. Dent, 9 B. Mon. 526, 845, 983, 1534, 1536
v. Hudson, 16 Gray 417, 685
v. Inhabitants &c., 76 Maine 415, 176
Talbot Pav. Co. v. City of Detroit, 109 Mich. 657, 752, 1687
v. Common Council &c., 91 Mich. 262, 1673
Talcott v. City of Buffalo, 125 N. Y. 280, 514, 825
v. City of Buffalo, 57 Hun 43, 655
Talkington v. Turner, 71 Ill. 234, 378
Tallant v. City of Burlington, 39 Iowa 543, 1258
Tallman v. White, 2 N. Y. 66, 1533
Tammany W. W. v. New Orleans W. W., 120 U. S. 64, 1808
Tamworth v. Freedom, 17 N. H. 279, 1046, 1047
Tapley v. Martin, 116 Mass. 275, 320
Tappan v. Gray, 7 Hill 259, 296
v. Long Branch &c., 59 N. J. L. 371, 291
v. Merchants' &c. Bank, 19 Wall. 490, 1501
v. People, 67 Ill. 339, 1483
v. Young, 9 Daly 357, 506, 572
Tarba v. City of Rochester, 58 N. Y. S. 755, 1359, 1360
Tarbox v. Sughrue, 36 Kan. 225, 155
Tarbutton v. Town of Tennille, 110 Ga. 90, 787
Tarry v. Ashton, 1 Q. B. D. 314, 1779
Tash v. Adams, 10 Cush. 252, 668, 1730
Tate v. Missouri &c. R. Co., 64 Mo. 149, 1354
Tatham's Appeal, 80 Pa. St. 465, 894
Tatlock v. Louisa Co., 46 Iowa 138, 840
Taubert v. City of St. Paul, 68 Minn. 519, 1358
Taverner's Case, Dyer 322, 467
Tawas &c. R. Co. v. Circuit Judge, 45 Mich. 204, 1672
Tawney v. Lynn &c. R. Co., 16 L. J. Eq. 282, 699
Taxes Delinquent &c., In re, 75 Minn. 456, 1033
Taxpayers &c., In re, 51 N. Y. S. 612, 1701
Taxpayers &c., Matter of, 43 How. Pr. 263, 988
Taxpayers of Green, Matter of, 38 How. Pr. 515, 987
Taxpayers of Milan v. Tennessee &c. R. Co., 11 Lea 330, 982, 996
Taxpayers of Plattsburg, In re, 157 N. Y. 78, 871
Taxpayers of Webster Parish v. Police Jury, 52 La. An. 465, 1760
Taylor, Ex parte, 58 Miss. 478, 1395
v. Baltimore &c., R. Co., 33 W. Va. 39, 1108
v. Board &c., 31 Pa. St. 73, 246, 1551, 1725, 1726
v. Boulware, 17 Tex. 74, 1517
v. City of Carondelet, 22 Mo. 105, 516, 532
v. City of Cohoes, 105 N. Y. 54, 1746

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Taylor v. City of Fort Wayne, 47 Ind. 274, 384, 1517, 1769
v. City of Owensboro, 98 Ky. 271, 804
v. City of Pine Bluff, 34 Ark. 603, 467
v. City of Yonkers, 105 N. Y. 202, 1599, 1605, 1606, 1607
v. Clemson, 11 Cl. & F. 610, 695
v. Commissioners &c., 2 Jones Eq. 141, 118
v. Commissioners, 88 Ill. 526, 1170
v. Common Council &c., 43 N. J. Eq. 107, 1464
v. Commonwealth, 3 J. J. Marsh. 401, 150
v. County Court, 2 Utah 405, 1735
v. District Tp. of Wayne, 25 Iowa 447, 952, 1088
v. Dunn, 80 Tex. 652, 1367, 1368
v. Grand Trunk R. Co., 48 N. H. 304, 1108
v. Henry, 2 Pick. 397, 352, 353, 355, 365, 1429
v. Hepper, 2 Hun 646, 1565
v. Hopper, 62 N. Y. 649, 1564
v. Inhabitants &c., 8 Met. 462, 802
v. Kercheval, 82 Fed. 497, 1826
v. Knipe, 2 Pearson 151, 1745
v. Lake Shore R. Co., 45 Mich. 74, 1588
v. Lambertville, 43 N. J. Eq. 107, 240
v. Mayor &c., 39 Ga. 59, 543
v. Mayor &c., 64 Md. 68, 815
v. McFadden, 84 Iowa 262, 279, 553, 1150, 1534
v. Mott, 123 Cal. 497, 926
v. Newberne, 2 Jones Eq. 141, 61
v. Palmer, 31 Cal. 240, 480, 487, 1192, 1262
v. People, 66 Ill. 322, 244
v. People, 6 Park. Cr. 536, 1106
v. Phillippi, 35 W. Va. 554, 1574
v. Porter, 4 Hill 140, 687
v. Skrine, 3 Brev. 516, 70, 197
v. Taylor, 10 Minn. 107, 374, 381
v. Thompson, 42 Ill. 9, 845
v. Town of Constable, 10 N. Y. S. 607, 1631
v. Town of Constable, 15 N. Y. S. 795, 778
Taylor Co. v. Standley, 79 Iowa 666, 605, 840
Taylors of Ipswich v. Sherring, 1 Rol. 4, 123
Taylor Tp. v. Morton, 37 Iowa 550, 319
Taymouth Tp. v. Koehler, 35 Mich. 22, 644, 1029, 1540
T. B. Scott Lumber Co. v. Oneida Co., 72 Wis. 158, 561
Tearney v. Smith, 86 Ill. 391, 224
Teater v. City of Seattle, 10 Wash. 327, 1329
Teegarden v. City of Racine, 56 Wis. 545, 555, 561, 1253
Teft v. Size, 10 Ill. 432, 541
Temple v. Mead, 4 Vt. 535, 158
Ten Eyck v. Delaware &c. Canal Co., 18 N. J. L. 200, 4, 6
Tennant v. Crocker, 85 Mich. 328, 297, 1665
Tensas &c. Jury v. Britton, 15 Wall. 566, 239
Terhune v. Mayor &c., 88 N. Y. 248, 172, 213, 798
Terrall v. Tinney, 20 La. An. 444, 335
Terre Haute &c. R. Co. v. Clem, 123 Ind. 15, 1627
v. Earp, 21 Ill. 291, 994
v. McKinly, 33 Ind. 274, 1108
v. Nelson, 130 Ind. 258, 1163
v. Voelker, 129 Ill. 540, 491
Terre Haute &c. R. Co. v. Voelker, 31 Ill. App. 314, 1424
Terrell v. Andrew Co., 44 Mo. 309, 228
v. Strong, 35 N. Y. S. 1000, 751
Terrett v. Town of Sharon, 34 Conn. 105, 651, 1730
Territory v. Armstrong, 6 Dak. 226, 1689
v. Board &c., 8 Mont. 396, 946
v. Cole, 3 Dak. 301, 339
v. Stewart, 1 Wash. 98, 57
Terry v. City of Hartford, 39 Conn. 291, 1253
v. City of Milwaukee, 15 Wis. 490, 959
v. City of Richmond, 94 Va. 537, 743, 796
v. Town of Waterbury, 35 Conn. 526, 1573
Tesh v. Commonwealth, 4 Dana 522, 1410
Tevis v. Randall, 6 Cal. 632, 309
Texarkana v. Leach, 66 Ark. 40, 1705
Texas Banking Ins. Co. v. State, 42 Tex. 636, 1508, 1521
Texas &c. R. Co. v. City of New Orleans, 40 Fed. 11, 1183
Thaler v. W. Chicago Pk. Com'rs, 174 Ill. 211, 1298
Tharp v. Witham, 65 Iowa 566, 699, 706
Thatcher v. Chicago &c. R. Co., 120 Ill. 560, 837
v. City of Toledo, 19 Ohio C. C. 311, 477
v. Commissioners, 13 Kan. 182, 663, 664
v. Humble, 67 Ind. 444, 656
v. People, 79 Ill. 597, 1720
Thayer v. City of Boston, 19 Pick. 511, 811, 819, 820, 1112
v. Montgomery Co., 3 Dill. 389, 1740
v. Stearns, 1 Pick. 109, 347, 348
v. United States, 20 Ct. Cl. 137, 773
Thelian v. Porter, 14 Lea 622, 1115
Theisen v. McDavid, 34 Fla. 440, 599
Third Nat'l Bank &c. v. Town of Seneca Falls, 15 Fed. 783, 1001
Third School Dist. v. Atherton, 12 Met. 105, 365, 965, 1425, 1427, 1485
Thomas, Ex parte, 71 Cal. 204, 1537
v. Ashland, 12 Ohio St. 124, 54
v. Citizens' Horse R. Co., 104 Ill. 462, 276
v. City of Burlington, 69 Iowa 140, 247, 891, 1552
v. City of Grand Junction, 13 Colo. App. 80, 488, 1710, 1810
v. City of Olympia, 12 Wash. 465, 1306
v. City of Port Huron, 27 Mich. 320, 984
v. City of Richmond, 12 Wall. 349, 74, 88, 233, 254, 638
v. Dakin, 22 Wend. 9, 3, 45, 50
v. Gain, 35 Mich. 155, 1238, 1254, 1267, 1270, 1297, 1303
v. Incorporated Village of Ashland, 12 Ohio St. 124, 1410
v. Leland, 24 Wend. 65, 763, 1531, 1514, 1538
v. Morgan Co., 39 Ill. 496, 1017
v. Owens, 4 Md. 189, 168, 198, 369
v. Pacific R. Co., 9 Wall. 579, 7
v. Town of Brooklyn, 58 Iowa 438, 1556
v. Town of Grafton, 34 W. Va. 299, 1394
v. Town of Mt. Vernon, 9 Ohio 290, 529, 1418
v. White, 12 Mass. 367, 311

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Thomason v. Ashworth, 73 Cal. 73, 88, 108
Thomasson v. State, 15 Ind. 449, 1508
Thompson v. Abbott, 61 Mo. 176, 383, 1474
v. Allen Co., 115 U. S. 550, 1529
v. Androscoggin River Imp. Co., 54 N. H. 545, 676, 677
v. Board of Trustees, 30 Ill. 99, 865
v. Citizens' St. R. Co., 152 Ind. 461, 515
v. City of Corpus Christi, 38 S. W. 373, 1786
v. City of Milwaukee, 69 Wis. 492, 89, 121
v. Holt, 52 Ala. 491, 223
v. Independent School Dist., 102 Iowa 94, 876, 879
v. Inhabitants &c., 7 Pick. 188, 1639
v. Kelly, 2 Ohio St. 647, 995
v. Mayor &c., 52 N. Y. Super. 427, 798
v. Milwaukee &c. R. Co., 27 Wis. 93, 1218
v. Moran, 44 Mich. 602, 688
v. New York &c. R. Co., 3 Sand. Ch. 625, 568
v. Perrine, 103 U. S. 806, 643, 870
v. Perrine, 106 U. S. 589, 1019
v. Schermerhorn, 6 N. Y. 92, 281, 509, 547, 572, 1232, 1539
v. Searcy Co., 6 C. C. A. 674, 952
v. State, 23 Tex. Civ. App. 370, 93
v. Town of Mamakating, 37 Hun 400, 1028
v. Treasurer of Wood Co., 11 Ohio St. 678, 1084
v. Village of Quincy, 83 Mich. 173, 1210
v. Whipple, 54 Ark. 203, 227
Thompson-Houston Electric Co. v. City of Newton, 42 Fed. 723, 552, 553, 574, 576, 881
Thompson N. W. Co. v. City of Chicago, 79 Fed. 984, 795
Thomson v. Lee Co., 3 Wall. 327, 410, 627, 643, 764, 1016
v. Mayor &c., 61 Mo. 282, 282, 680, 1539
v. Pacific R. Co., 9 Wall. 579, 45
v. People, 184 Ill. 17, 525, 1274, 1289
Thorn v. Sweeney, 12 Nev. 251, 688
v. W. Chicago Com'rs, 130 Ill. 594, 1149, 1257
Thornton v. City of Clinton, 148 Mo. 648, 1292
v. Missouri Pac. R. Co., 42 Mo. App. 58, 671
v. Smith, 1 Wash. 81, 1420
Thorp v. Town of Brookfield, 36 Conn. 320, 1641
v. Rutland &c. R. Co., 27 Vt. 140, 80, 1381
Thurston v. City of St. Joseph, 51 Mo. 510, 1112, 1602, 1802
Tice v. Bay City, 84 Mich. 461, 1210
v. City of New Brunswick, 64 N. J. L. 399, 175
Tidd v. Smith, 3 N. H. 178, 346
Tide Water Canal Co. v. Archer, 9 G. & J. 479, 186
Tidewater Co. v. Coster, 18 N. J. Eq. 518, 1297
Tiede v. Schneidt, 105 Wis. 470, 727
Tiedt v. Carstensen, 61 Iowa 334, 706, 1712
Tie Log, In re, 26 Fed. 611, 1083
Tierney v. Brown, 65 Miss. 563, 277
v. Dodge, 9 Minn. 166, 107, 115, 1419
Tifft v. City of Buffalo, 82 N. Y. 204, 675
v. City of Buffalo, 7 N. Y. S. 633, 1234, 1255
Tighe v. City of Lowell, 119 Mass. 472, 1595
Tilden v. Metcalf, 2 Day 259, 1735
Tilford v. City of Olathe, 44 Kan. 721, 393
v. Mayor &c., 37 N. Y. S. 185, 804
Tilyou v. Town of Gravesend, 104 N. Y. 356, 615
Times Pub. Co. v. City of Everett, 9 Wash. 518, 752
Tims v. State, 26 Ala. 165, 1414, 1418
Tindley v. City of Salem, 137 Mass. 171, 803, 807, 1068, 1096
Tingley v. Vaughn, 17 Ill. App. 347, 1492
Tingue v. Village of Port Chester, 101 N. Y. 294, 1204, 1288
Tinsley v. Kirby, 17 S. C. 1, 289
Tinsman v. Belvidere Del. R. Co., 26 N. J. L. 148, 4, 6
v. Monroe Probate Judge, 82 Mich. 562, 1178
Tippets v. Walker, 4 Mass. 595, 216
Tipton Co. v. Locomotive Works, 103 U. S. 523, 995
Tisdale v. Inhabitants &c., 8 Met. 388, 776
v. Inhabitants &c., 167 Mass. 248, 1339
v. President &c., 46 Ill. 9, 64, 486, 529, 1691
Title Guarantee &c. Co. v. City of Chicago, 162 Ill. 505, 501, 1130, 1147, 1174, 1244, 1296
Titus v. Inhabitants &c., 97 Mass. 258, 818, 1332, 1601
Titusville Electric Light & Power Co. v. City of Titusville, 196 Pa. St. 3, 1185
Tobey v. City of Hudson, 2 N. Y. S. 180, 1606
Tobin, In re, 66 N. Y. S. 97, 1768
v. Portland &c. R. Co., 59 Maine 183, 810
Todd v. Birdsall, 1 Cow. 260, 192, 193
v. City of Laurens, 48 S. C. 395, 875, 879
v. City of Troy, 61 N. Y. 506, 1587, 1591, 1607
Todemier v. Aspinwall, 43 Ill. 401, 1571
Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37, 501, 1148
v. Detroit &c. R. Co., 62 Mich. 564, 637
v. Munson, 57 Mich. 42, 696
v. President &c., 43 Ill. 209, 526
Toledo R. Co. v. Toledo Electric R. Co., 6 Ohio C. C. 362, 1422
Toll Bridge Co. v. Bitsworth, 30 Conn. 380, 1806
Tomason v. Justices, 3 Humph. 233, 1672
Tomlin v. City of Cape May, 63 N. J. L. 429, 527, 550, 592
Tomlinson v. Jessup, 15 Wall. 454, 104
Tompert v. Lithgow, 1 Bush 176, 207
Tompkins v. North Hudson R. Co., 63 N. J. L. 322, 1348
v. Sands, 8 Wend. 462, 221, 335
Tone v. Mayor &c., 70 N. Y. 157, 781
Toop v. City of New York, 13 N. Y. S. 280, 1176
Tootle v. Wells, 39 Kan. 452, 316
Topeka v. Sherwood, 39 Kan. 690, 1584
Topeka Water Supply Co. v. City of Potwin Place, 43 Kan. 404, 1177
Topsham v. Rogers, 42 Vt. 189, 258
Torbett v. City of Louisville, 9 Ky. L. 202, 1514

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Torbush v. City of Norwich, 38 Conn. 225, 264
Torr v. Corcoran, 115 Ind. 188, 276
Torrent v. Common Council &c., 47 Mich. 115, 666
Torrey v. Inhabitants &c., 21 Pick. 64, 361
v. Willard, 8 N. Y. S. 392, 1489
Tory v. Lexington &c. R. Co., 2 Met. 314, 994
Tower v. Tower, 18 Pick. 262, 1751
Towle v. Brown, 110 Ind. 65, 445
v. Brown, 110 Ind. 599, 1487
v. Marrett, 3 Maine 22, 106
v. State, 110 Ind. 120, 1518
Town Council &c. v. Court, 1 El. & El. 770, 276
v. Elliott, 5 Ohio St. 113, 629, 990
v. McComb, 18 Ohio 229, 811
v. Ohlandt, 24 S. C. 158, 1414, 1418
v. Pressley, 33 S. C. 56, 594, 1079
v. Railroad Co., 10 R. I. 365, 591, 592
v. Smart, 11 Rich. 551, 1403
Town &c. See also, Inhabitants &c.; Name of Town.
Town of Ackley v. Town of Vilas, 79 Wis. 157, 440
Town of Albuquerque v. Zeiger, 5 N. M. 674, 1207, 1288
Town of Arcata v. Arcata &c. R. Co., 92 Cal. 639, 589
Town of Arkadelphia v. Clark, 52 Ark. 23, 1120
Town of Atchison v. Butcher, 3 Kan. 104, 992
Town of Auburn v. Eldridge, 77 Ind. 126, 537
Town of Aurora v. Chicago &c. R. Co., 119 Ill. 246, 1542
Town of Bayard v. Baker, 76 Iowa 220, 300, 477, 478, 487, 489
Town of Beacon Falls v. Town of Seymour, 44 Conn. 210, 1051
Town of Bennington v. Park, 50 Vt. 178, 1539
Town of Bergen v. State, 32 N. J. L. 490, 468
Town of Bethlehem v. Town of Watertown, 51 Conn. 490, 1051
Town of Bloomfield v. Trimble, 54 Iowa 399, 496, 607
Town of Boswell v. Wakley, 149 Ind. 64, 1325, 1328, 1329
Town of Brookville v. Gagle, 73 Ind. 177, 528, 535
Town of Bruce v. Dickey, 116 Ill. 527, 663, 715, 865, 1349
Town of Burlington v. Schwarzman, 52 Conn. 181, 1109
Town of Burton v. Town of Wakefield, 4 N. H. 47, 1046
Town of Butternut v. O'Malley, 50 Wis. 333, 409, 451
Town of Byron v. State, 35 Wis. 313, 831
Town of Cabot v. Britt, 36 Vt. 349, 1425
Town of Camden v. Bloch, 65 Ala. 236, 543, 1418
Town of Canaan v. Derush, 47 N. H. 212, 240
Town of Cantril v. Sanler, 59 Iowa 26, 519
Town of Central Covington v. Park, 21 Ky. L. 1847, 1244
Town of Charleston v. Town of Lunenburgh, 21 Vt. 488, 1737
Town of Chittenden v. Town of Barnard, 61 Vt. 145, 1042
Town of Cicero v. Williamson, 91 Ind. 541, 1572
Town of Coloma v. Eaves, 92 U. S. 484, 256, 257, 885, 1001, 1002, 1003, 1004, 1006, 1007, 1008 1009, 1010, 1011, 1029
Town of Colorado City v. Townsend, 9 Colo. App. 249, 719
Town of Concord v. Portsmouth Sav. Bank, 92 U. S. 625, 996, 1023
Town of Covington v. Nelson, 35 Ind. 532, 1288
Town of Cromwell v. Connecticut &c. Quarry Co., 50 Conn. 470, 629
Town of Crowley v. West, 52 La. An. 526, 1387
Town of Croydon v. Sullivan Co., 47 N. H. 179, 1042, 1058
Town of Dakota v. Town of Winneconne, 55 Wis. 522, 1063
Town of Danville v. Shelton, 76 Va. 325, 1132, 1256, 1548
Town of Darlington v. Atlantic Tr. Co., 68 Fed. 849, 610
v. Ward, 48 S. C. 570, 501
Town of Davis v. Filler, 47 W. Va. 413, 208
Town of Decorah v. Bullis, 25 Iowa 12, 288, 289, 296
v. Dunstan, 38 Iowa 96, 523, 1405
Town of Depere v. Town of Bellevue, 31 Wis. 120, 409, 424, 436
Town of Derby v. Alling, 40 Conn. 410, 1109
Town of Dixon v. Mayes, 72 Cal. 166, 1515
Town of Douglasville v. Johns, 62 Ga. 423, 244
Town of Dover v. Tawressey, 2 Marv. 285, 1738
Town of Duanesburgh v. Jenkins, 57 N. Y. 177, 982, 992, 1010, 1532, 1538, 1539
Town of Durango v. Pennington, 8 Colo. 257, 259, 260, 715, 729, 1193
Town of Eagle v. Kohn, 84 Ill. 292, 991, 1013
Town of East Chester, In re, 53 Hun 181, 927
Town of East Hartford v. Hartford Bridge Co., 10 How. 536, 90, 103, 758
Town of East Lincoln v. Davenport, 94 U. S. 801, 995, 1001, 1023
Town of Edenton v. Wool, 65 N. J. L. 218, 1412
Town of Eldora v. Burlingame, 62 Iowa 32, 519, 541
Town of Elkhart v. Ritter, 66 Ind. 136, 1580, 1624
Town of Flora v. Lee, 5 Ill. App. 629, 477, 539, 540
Town of Fox v. Town of Kendall, 97 Ill. 72, 1084
Town of Freeport v. Board of Supervisors, 41 Ill. 495, 1042
Town of Geneva v. Cole, 61 Ill. 397, 1691
Town of Gloster v. Harrell, 77 Miss. 793, 311
Town of Granby v. Thurston, 23 Conn. 416, 103, 965
Town of Grand Isle v. Kinney, 70 Vt. 381, 721
Town of Greenburg v. International Tr. Co., 94 Fed. 755, 1031
Town of Guilford v. Board &c., 13 N. Y. 143, 763, 1522
v. Board &c., 18 Barb. 615, 1521
Town of Hackettstown v. Swackhamer, 37 N. J. L. 191, 634, 974
Town of Hamden v. Bethany, 43 Conn. 212, 1051
v. New Hampshire R. Co., 27 Conn. 158, 1108
v. Rice, 24 Conn. 350, 664

[References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.]

Town of Hamilton v. Chopard, 9 Wash. 352, 1290
Town of Hampton v. Coffin, 4 N. H. 517, 705
Town of Hardwick v. Town of Pawlet, 36 Vt. 320, 1058
Town of Harrisonburg v. Roller, 97 Va. 582, 551, 587, 1708
Town of Hendersonville v. Price, 96 N. C. 423, 650
Town of Jacksonport v. Watson, 33 Ark. 704, 651, 1730
Town of Jamestown v. Chicago &c. R. Co., 69 Wis. 648, 1171, 1667
Town of Jericho v. Town of Underhill, 64 Vt. 362, 1055
Town of Kirkwood v. Newbury, 122 N. Y. 571, 1580
v. Newbury, 45 Hun 323, 1172
Town of Klamath Falls v. Sachs, 35 Or. 325, 882, 999, 1011, 1030, 1033
Town of Kosciusko v. Slomberg, 68 Miss. 469, 1102
Town of Lake View v. Letz, 44 Ill. 81, 503
Town of Latonia v. Hopkins, 20 Ky. L. 620, 1505
Town of Laurel v. Blue, 1 Ind. App. 128, 1076
Town of Lemington v. Blodgett, 37 Vt. 215, 240, 345
Town of Lemont v. Singer &c. Co., 98 Ill. 94, 1717, 1720
Town of Levis v. Black River Imp. Co., 105 Wis. 391, 725
Town of Lewiston v. Proctor, 23 Ill. 483, 535, 1420
Town of Lexington v. Union Nat. Bank, 75 Miss. 1, 998, 1014, 1029
Town of Londonderry v. Town of Andover, 28 Vt. 416, 86, 87
Town of Lyndon v. Miller, 36 Vt. 329, 325
Town of Lyons v. Cook, 9 Ill. App. 543, 1551
v. Cooledge, 89 Ill. 529, 865
Town of Macon v. Patty, 57 Miss. 378, 1198, 1252, 1297
Town of Madison v. Newsome, 39 Fla. 149, 711
Town of Marietta v. Fearing, 4 Ohio 427, 90, 103, 522
Town of Martinsville v. Frieze, 33 Ind. 507, 539
Town of Mentz v. Cook, 108 N. Y. 504, 1023
Town of Middlebury v. Waltham, 6 Vt. 200, 1042
Town of Middleport v. Ætna Life Ins. Co., 82 Ill. 562, 625, 996
Town of Milwaukee v. City of Milwaukee, 12 Wis. 93, 424, 437, 1519
Town of Montgomery v. Le Sueur Co., 32 Minn. 532, 1095
Town of Monticello v. Banks, 48 Ark. 251, 1271
v. Cohn, 48 Ark. 254, 650
Town of Montpelier v. Town of East Montpelier, 29 Vt. 12, 459, 1519
Town of Moundsville v. Velton, 35 W. Va. 217, 538, 1420
Town of Mt. Vernon v. Patton, 94 Ill. 65, 663, 865
Town of Mt. Zion v. Gillman, 14 Fed. 123, 1720
Town of Muskego v. Drainage Com'rs, 78 Wis. 40, 1178
Town of New Athens v. Thomas, 82 Ill. 259, 260
Town of New Castle v. Lake Erie &c. R. Co., 155 Ind. 18, 1810
Town of New Hampton v. Conroy, 56 Iowa 498, 532, 1400
Town of New Hartford v. Town of Canaan, 52 Conn. 168, 1054
Town of New Haven v. Town of Middlebury, 63 Vt. 399, 1060
Town of New Shoreham v. Ball, 14 R. I. 566, 665
Town of Norman v. Ince, 8 Okl. 412, 1782
Town of North Hempstead v. Town of Hempstead, Hopk. 288, 1536
Town of North Hempsted v. Town of Hempsted, 2 Wend. 109, 7, 50, 435, 445, 1519
Town of Ocean Springs v. Green, 77 Miss. 472, 488, 549
Town of Odell v. Schroeder, 58 Ill. 353, 772, 789
Town of Olin v. Meyers, 55 Iowa 209, 299, 1421
Town of Opelousas v. Andrus, 37 La. An. 699, 480
Town of Pacific v. Seifert, 79 Mo. 210, 516
Town of Pana v. Lippincott, 2 Ill. App. 466, 989, 992, 1027
Town of Paris v. Farmers' Bank, 30 Mo. 575, 1513
Town of Parkland v. Ganis, 88 Ky. 563, 1271
Town of Petersburg v. Mappin, 14 Ill. 193, 659
v. Metzker, 21 Ill. 205, 97, 468, 494
Town of Pierrepont v. Loveless, 72 N. Y. 211, 1591
Town of Plainfield v. Village of Plainfield, 67 Wis. 525, 948
Town of Platteville v. Galena &c. R. Co., 43 Wis. 493, 1540
Town of Plattsmouth v. Fitzgerald, 10 Neb. 401, 1022
Town of Pleasant v. Kost, 29 Ill. 490, 1246
Town of Plymouth v. Paniter, 17 Conn. 585, 195
Town of Poplin v. Town of Hawke, 8 N. H. 305, 1058, 1064
Town of Prairie v. Lloyd, 97 Ill. 179, 1017
Town of Princeton v. Vierling, 40 Ind. 340, 242, 245
Town of Reading v. Town of Westport, 19 Conn. 561, 1042
Town of Remington v. Ward, 78 Wis. 539, 587, 858
Town of Rensselaer v. Leopold, 106 Ind. 29, 687, 1301
Town of Rhine v. City of Sheboygan, 82 Wis. 352, 1059
Town of Rockingham v. Springfield, 59 Vt. 521, 948, 1042
Town of Roswell v. Dominice, 9 N. M. 624, 1236
Town of Rushville v. Adams, 107 Ind. 475, 1612
Town of Rutland v. Paige, 24 Vt. 181, 1015
Town of Ryegate v. Town of Wardsboro, 30 Vt. 746, 1058
Town of Salem v. McClintock, 16 Ind. App. 656, 151
Town of Saukville v. State, 69 Wis. 178, 831
Town of Searcy v. Yarnell, 47 Ark. 269, 64, 629
Town of Sheboygan v. Sheboygan &c. Co., 21 Wis. 675, 1171
Town of Solon v. Williamsburg Sav. Bank, 114 N. Y. 122, 1014, 1022, 1027
Town of Somerset v. Town of Glastenbury, 61 Vt. 449, 62

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Town of South Ottawa v. Foster, 20 Ill. 296, 775
v. Perkins, 94 U. S. 260, 986, 998
Town of Spiceland v. Aller, 98 Ind. 467, 1625
Town of Springfield v. Teutonia Sav. Bank, 84 N. Y. 403, 987
Town of Stamford v. Town of Readsboro, 46 Vt. 606, 1042
Town of State Center v. Barenstein, 66 Iowa 249, 500, 506, 508, 1396, 1405, 1406
Town of Sullivan v. Phillips, 110 Ind. 320, 1177
Town of Swanton v. Pratt, 15 Vt. 147, 1213
Town of Thornton v. Fugate, 21 Ind. App. 537, 1780, 1800
Town of Tipton v. Norman, 72 Mo. 380, 464, 526, 540, 1421, 1422
Town of Topsham v. Town of Chelsea, 60 Vt. 219, 1058
Town of Tumwater v. Pix, 15 Wash. 324, 1241
Town of Tupelo v. Beard, 56 Miss. 532, 1552
Town of Union v. Durkes, 38 N. J. L. 21, 1216
Town of Venice v. Murdock, 92 U. S. 494, 885, 1001, 1003, 1009, 1539
v. Woodruff, 62 N. Y. 462, 1010
Town of Wakefield v. Town of Alton, 3 N. H. 378, 1047
Town of Waltham v. Kemper, 55 Ill. 346, 82, 265, 267, 772, 775, 1342
Town of Warrensburgh v. Miller, 77 Mo. 56, 1727
Town of Washington v. Hammond, 76 N. C. 33, 497
v. Town of Kent, 38 Conn. 249, 1052
Town of Waterville v. County Com'rs, 59 Maine 80, 1252, 1522
Town of Wauwatosa v. Gunyon, 25 Wis. 25, 1536
Town of Weare v. Town of New Boston, 3 N. H. 203, 1046
Town of Wellsborough v. New York &c. R. Co., 76 N. Y. 182, 988
Town of Westbrook's Appeal, 57 Conn. 95, 1379
Town of West Hartford v. Board &c., 44 Conn. 361, 572
Town of Weyauwega v. Ayling, 99 U. S. 112, 1001, 1015
Town of Whiting v. Doob, 152 Ind. 157, 519, 1789
Town of Williamsport v. Liske, 21 Ind. App. 414, 1325, 1329
Town of Winamac v. Huddleston, 132 Ind. 217, 632, 655
Town of Windham v. Town of Lebanon, 51 Conn. 319, 1052
Town of Windsor v. Hallett, 97 Ill. 204, 1013
Town of Woodbury v. Brown, 101 Tenn. 707, 63
Town of Woodstock v. Gallup, 28 Vt. 587, 691
Town of Worcester v. Town of East Montpelier, 61 Vt. 139, 1042
Town of Worthington v. Morgan, 17 Ind. App. 603, 1316
Townsend, In re, 39 N. Y. 171, 979, 983
v. City of Manistee, 88 Mich. 408, 918, 1202
v. Copeland, 56 Cal. 612, 1712
v. Greely, 5 Wall. 326, 1743
v. Hoyle, 20 Conn. 1, 684
v. Lamb, 14 Neb. 324, 990
Township Board &c. v. Hackman, 48 Mo. 243, 689
v. Hastings, 52 Mich. 528, 732
Tracy v. Cloyd, 10 W. Va. 19, 225
v. Elizabethtown &c. R. Co., 80 Ky. 259, 685
v. Goodwin, 5 Allen 409, 330, 332
v. People, 6 Colo. 151, 299 300, 477, 478, 729, 1133, 1193
v. Town of Phelps, 22 Fed. 634, 1028
v. Williams, 4 Conn. 107, 335, 536
Trading Stamp Co. v. Memphis, 101 Tenn. 181, 1389, 1704
Trafton v. Alfred, 3 Shepl. 258, 211
Trageser v. Gray, 73 Md. 250, 1399
Train v. Boston Disinfecting Co., 144 Mass. 523, 1116, 1600
Trammell v. Lee, 94 Ala. 194, 1074
v. Town of Russellville, 34 Ark. 105, 1075
Transportation Co. v. Chicago, 99 U. S. 635, 680, 801, 1317
v. Parkersburg, 107 U. S. 691, 1576
v. Wheeling, 99 U. S. 273, 1502, 1537
Transylvania University v. City of Lexington, 3 B. Mon. 25, 1213
Trapnell v. Red Oak Junction, 76 Iowa 744, 1620
Travelers' Ins. Co. v. City of Denver, 11 Colo. 434, 953, 961
v. Mayor &c., 99 Fed. 663, 1032
Traver v. Merrick Co., 14 Neb. 327, 981
Travis v. Uttley, 1 Q. B. 233, 1376
Treadway v. Schnauber, 1 Dak. 236, 646
Treasurer &c. v. Mulford, 26 N. J. L. 49, 543, 1257, 1712
Tredwell v. City of Brooklyn, 43 N. Y. S. 458, 1281, 1291
Tremain v. Cohoes Co., 2 N. Y. 163, 824
Trench v. Nolan, 6 Ir. R. C. L. 464, 378
Trenor v. Jackson, 15 Abb. Pr. 115, 620
Trent v. Cartersville Bridge Co., 11 Leigh 521, 1463
Trescott v. City of Waterloo, 26 Fed. 592, 263, 822
Trester v. City of Sheboygan, 87 Wis. 496, 587
Trigally v. Mayor &c., 6 Coldw. 382, 526, 1414
Trigg v. Trustees &c., 2 Bush 594, 1499
Trimble v. City of Mt. Sterling, 11 Ky. L. 727, 1503
Trimmer v. City of Rochester, 130 N. Y. 401, 1205, 1264
Trimmier v. Bomar, 20 S. C. 354, 989
Trinity Co. v. Polk Co., 58 Tex. 321, 434
Tripler v. Mayor &c., 125 N. Y. 617, 1263, 1265
Tritz v. City of Kansas, 84 Mo. 632, 1580
Trost v. Eastern R. Co., 64 N. H. 220, 795
Trott v. Warren, 11 Maine 227, 48, 49
Trotter v. City of Chicago, 33 Ill. App. 206, 605
Trowbridge v. Inhabitants &c., 144 Mass. 139, 809, 1180
v. Mayor &c., 46 N. J. L. 140, 519
Troxel v. City of Vinton, 77 Iowa 90, 1617, 1635
Troy v. A. & N. R. Co., 11 Kan. 519, 1423
Truax v. Pool, 46 Iowa 256, 1517
Truchelut v. City Council, 1 N. & McC. 227, 468, 763, 1420
True v. Davis, 133 Ill. 522, 103, 383, 386, 396, 888, 1347
Truesdale v. Peoria Grape Sugar Co., 101 Ill. 651, 1706
Truesdell's Appeal, 58 Pa. St. 148, 1540
v. Combs, 33 Ohio St. 186, 335
Trumbo v. People, 75 Ill. 561, 1691

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Trustees &c. v. City of Atlanta, 76 Ga. 181, 1247
v. City of Erie, 31 Pa. St. 515, 92, 491
v. City of Jacksonville, 61 Ill. App. 199, 741
v. Cowen, 4 Paige 510, 1109, 1556, 1564
v. Demott, 13 Ohio 104, 1063
v. Dillon, 16 Ohio St. 38, 1529
v. Erie, 31 Pa. St. 515, 523, 1421
v. Foster, 30 N. Y. S. 686, 1340
v. Garvey, 80 Ky. 159, 1540
v. Gibbs, 2 Cush. 39, 155
v. Hills, 6 Cowen 23, 288
v. Hohn, 82 Ky. 1, 233, 253, 648
v. Inhabitants &c., 175 Mass. 118, 1290, 1550
v. Jameson, 12 Ky. L. 719, 850, 1472
v. Keeting, 4 Denio 341, 115
v. King, 12 Mass. 546, 563
v. Kirk, 68 N. Y. 459, 19
v. Lefler, 23 Ill. 88, 85, 538, 540, 1132
v. Mayor &c., 33 N. J. L. 13, 629, 1374
v. McConnell, 12 Ill. 138, 1520
v. Mecox Bay &c. Co., 116 N. Y. 1, 18
v. Merryweather, 11 East 376, 1556
v. Moody, 62 Ala. 389, 261
v. Otis, 37 Barb. 50, 1567
v. Parks, 10 Maine 441, 50
v. Peaslee, 15 N. H. 317, 664
v. People, 121 Ill. 552, 1495, 1496
v. Perkins, 3 B. Mon. 437, 629
v. Rausch, 122 Ind. 167, 1185
v. Rautenberg, 88 Ill. 219, 216
v. Roome, 29 Hun 391, 901
v. Salmond, 11 Maine 109, 637
v. Satchwell, 71 N. C. 111, 45
v. Shepard, 22 R. I. 112, 1321
v. Sheperd, 139 Ill. 114, 1483
v. Southward, 31 Ill. App. 359, 914
v. Strong, 60 N. Y. 57, 19
v. Tatman, 13 Ill. 27, 103, 1084, 1537
v. Taylor, 30 N. J. Eq. 618, 76, 80, 81
v. Trustees, 81 Ill. 470, 1480
v. White, 48 Ohio St. 577, 938
v. Winston, 5 St. & P. 17, 7
v. Woodward, 1 N. H. 111, 75
Tubesing v. City of Buffalo, 69 N. Y. S. 399, 1339
Tuckahoe Canal v. Tuckahoe &c. R. Co., 11 Leigh 42, 679
Tucker v. Aiken, 7 N. H. 113, 196, 344, 351, 362, 379
v. City of Utica, 54 N. Y. S. 855, 1247
v. Justices &c., 13 Ired. L. 434, 301
v. Justices &c., 34 Ga. 370, 1533
v. Rankin, 15 Barb. 471, 1568
v. Sellers, 130 Ind. 514, 1287
Tucker & Frankfort Sts., In re, 166 Pa. St. 336, 1220
Tudor v. Chicago &c. R. Co., 154 Ill. 129, 515
Tuebner v. California &c. St. R. Co., 66 Cal. 171, 1108
Tufts v. City of Charlestown, 4 Gray 537, 702
v. State, 119 Ind. 232, 1476
v. Town of Chester, 62 Vt. 353, 1059
Tugman v. City of Chicago, 78 Ill. 405, 500, 502, 503, 614, 1357
Tuley v. State, 1 Ind. 500, 1483
Turfler, In re, 44 Barb. 46, 1533
Turnbull v. Alpena Tp., 74 Mich. 621, 1551
Turner v. Althaus, 6 Neb. 54, 1515, 1552, 1725
v. City of Chicago, 76 Ill. App. 649, 174
v. City of Indianapolis, 96 Ind. 51, 1624
v. City of Newburgh, 109 N. Y. 301, 826, 1375, 1590, 1625, 1636
v. Commissioners, 10 Kan. 16, 1655
v. Cruzen, 70 Iowa 202, 242, 655
v. Dartmouth, 13 Allen 291, 1216
v. Hadden, 62 Barb. 480, 1063
v. Killian, 12 Neb. 580, 332
v. Mayor &c., 78 Ga. 683, 620
v. Newburg, 109 N. Y. 301, 1586
v. Sisson, 137 Mass. 191, 332
v. Thomas, 10 Mo. App. 338, 217
v. Wilson, 49 Ind. 581, 530
v. Woodbury Co., 57 Iowa 440, 9, 775
Turney v. Town of Bridgeport, 55 Conn. 412, 860, 916, 927
Turpen v. County Com'rs, 7 Ind. 172, 183
Turrill v. Grattan, 52 Cal. 97, 1258
Tutt v. Hobbs, 17 Mo. 486, 216
Tuttle v. Cary, 7 Maine 426, 347
v. Everett, 51 Miss. 27, 242, 248
v. Polk, 92 Iowa 433, 876, 881
v. Town of Weston, 59 Wis. 151, 349
Twenty-sixth St., Matter of, 12 Wend. 203, 1233
Twiss v. City of Port Huron, 63 Mich. 528, 1257
Twist v. City of Rochester, 55 N. Y. S. 850, 793, 1316, 1332, 1362, 1802
Twogood v. Mayor &c., 102 N. Y. 216, 1621
Tyerman, In re, 48 Fed. 167, 1399
Tyler v. Alford, 38 Maine 530, 335
v. Beacher, 44 Vt. 648, 685, 980
v. Capeheart, 125 N. C. 64, 993
v. Elizabethtown &c. R. Co., 9 Bush 510, 92
v. Henry, 2 Pick. 397, 1425
v. Inhabitants &c., 147 Mass. 609, 688
v. Nelson, 14 Gratt. 214, 322, 323
v. State, 63 Vt. 300, 1420
v. Sturdy, 108 Mass. 106, 1557, 1561
v. Township Board &c., 75 Mo. App. 561, 1686
v. Williston, 62 Vt. 269, 1575, 1622
Tyree v. Wilson, 9 Gratt. 59, 323
Tyrrell v. City of New York, 159 N. Y. 239, 180, 181
Tyson v. City of Milwaukee, 50 Wis. 78, 680
v. School Directors, 51 Pa. St. 9, 1542

U

Uhl v. Board &c., 6 Lea 610, 1526
Uhrig v. City of St. Louis, 44 Mo. 458, 1266
Ulam v. Boyd, 87 Pa. St. 477, 262, 263
Uline v. New York &c. R. Co., 101 N. Y. 98, 1603, 1773
Ullman v. Mayor &c., 165 U. S. 719, 1302
Ulman v. Mayor, 72 Md. 587, 1237, 1242, 1267
Underhill v. City of Manchester, 45 N. H. 214, 800, 1394
v. Gibson, 2 N. H. 352, 868
Underwood v. Brockman, 4 Dana 309, 1725
v. Greene, 42 N. Y. 140, 1110
v. Stuyvesant, 19 Johns. 181, 1559
Union v. Crawford, 19 Conn. 331, 142
Union Bank &c. v. Board &c., 116 N. C. 339, 993

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Union Bank &c. v. Board &c., 90 Fed. 7, 1758
v. Commissioners &c., 119 N. C. 214. 736, 984, 985, 993, 1030, 1686
v. State, 9 Yerg. 489, 1501, 1532
Union Civil Tp. v. Berryman, 3 Ind. App. 344, 1076
Union Co. v. Knox Co., 90 Tenn. 541, 418
v. Slocum, 16 Or. 237, 944
Union Co. Court v. Robinson, 27 Ark. 116, 1540
Union Depot &c. R. Co. v. Smith, 16 Colo. 361, 191
Union Pac. R. Co. v. Board &c., 6 Kan. 256, 427
v. Cheyenne, 113 U. S. 516, 1697
v. Chicago &c. R. Co., 10 U. S. App. 98, 1758
v. City of Kansas City, 42 Kan. 497, 390
v. Commissioners &c., 98 U. S. 541, 242, 243, 245, 246, 247, 248
v. Commissioners &c., 4 Neb. 450, 981
v. Dunden, 37 Kan. 1, 794
v. Foley, 19 Colo. 280, 652
v. Merrill Co., 3 Dill. 359, 1022
v. Lincoln Co., 3 Dill. 300, 981, 985, 1022, 1717
v. Merrick Co., 3 Dill. 359, 985
v. Montgomery, 49 Neb. 429, 483
Union Paving &c. Co. v. McGovern, 127 Cal. 638, 726, 1240
Union School Tp. v. First Nat'l Bank, 102 Ind. 464, 647, 857, 862
Union St. R. Co. v. Stone, 54 Kan. 83, 1325, 1332, 1336
Union Tp. v. Rader, 41 N. J. L. 617, 452
v. Smith, 39 Iowa 9, 319
Union Trust Co. v. Monticello &c. R. Co., 63 N. Y. 311, 1019
v. Trumbull, 137 Ill. 146, 524
v. Weber, 96 Ill. 346, 1721
United Brethren Church v. Vandusen, 37 Wis. 54, 291
United Hebrew Ass'n v. Beushimol, 130 Mass. 325, 524
United N. J. R. &c. v. National Docks &c. R. Co., 57 N. J. L. 523, 1319
United States v. Adams, 24 Fed. 348, 328
v. Alexander, 46 Fed. 728, 195
v. American Water-works Co., 37 Fed. 747, 1462
v. Anthony, 11 Blatch. 200, 369
v. Arredonda, 6 Pet. 691, 615
v. Austin, 2 Cliff. 325, 179
v. Board &c., 20 Fed. 294, 1529
v. Booth, 11 Gill & J. 373, 1734
v. Boyd, 5 How. 29, 324
v. Boyd, 15 Peters 187, 317, 322
v. Brown, 9 How. 486, 175
v. City Bank of Columbus, 21 How. 356, 256
v. City of New Orleans, 31 Fed. 537, 948
v. City of Sterling, 2 Biss. 408, 847, 1529
v. Clark Co., 95 U. S. 769, 1525, 1646, 1680
v. Clark Co., 96 U. S. 211, 1524
v. County Court, 4 McCrary 218, 1525, 1526
v. Cruikshank, 92 U. S. 542, 137, 138, 369
v. Davis, 3 McLean 483, 1734
v. Dashiel, 4 Wall. 182, 319
v. Giles, 9 Cranch 212, 322
v. Gilmore, 8 Wall. 330, 1790
v. Girault, 11 How. 22, 324
v. Great Falls Mfg. Co., 112 U. S. 645, 772
United States v. Green, 8 Mack. 230, 1413, 1415
v. Harris, 106 U. S. 629, 140
v. Harris, 1 Sumner 21, 675, 685
v. Hillegas, 3 Wash. C. C. 70, 770
v. Hine, 3 McArth. 27, 332
v. Hodson, 10 Wall. 395, 311
v. Holly, 3 Cr. C. C. 656, 607
v. Hoyt, 1 Blatchf. 326, 327
v. Hudson, 7 Cranch 32, 205
v. Humason, 6 Sawyer 199, 312, 319
v. Insurance Co., 22 Wall. 99, 45
v. Irwin, 127 U. S. 125, 772
v. Jefferson Co., 5 Dill. 535, 1523
v. Jefferson Co., 1 McCrary 356, 996
v. Jones, 109 U. S. 513, 673, 697, 698
v. Justices &c., 5 Dill. 184, 1525
v. Keehler, 9 Wall. 83, 319
v. Keokuk, 6 Wall. 514, 1528
v. Kirkpatrick, 9 Wheat. 720, 317, 318, 319, 326, 771
v. Labette Co., 2 McCrary 25, 1646
v. Le Baron, 19 How. 73, 313
v. Lee, 106 U. S. 196, 18, 770, 772, 1721
v. Lincoln Co., 5 Dill. 184, 764
v. Linn, 15 Peters 290, 311, 1014
v. Macon Co., 99 U. S. 582, 1523, 1524, 1525, 1528, 1534, 1535
v. Maurice, 2 Brock. C. C. 96, 312
v. Mayor &c., 2 Woods 230, 1523
v. Mayor &c., 2 Am. L. Reg. N. S. 394, 1535
v. McCortney, 1 Fed. 104, 318
v. McDougall, 121 U. S. 89, 772
v. McKelden, MacArth. & M. 162, 349, 355, 368
v. Memphis, 97 U. S. 284, 387, 394, 1516, 1517, 1518, 1531
v. Miller Co., 4 Dill. 233, 847
v. Moore, 2 Brock. C. C. 317, 330
v. Morgan, 11 How. 153, 319
v. Morgan, 3 Wash. C. C. 10, 309
v. Nelson, 2 Brock. C. C. 64, 310
v. New Orleans, 98 U. S. 381, 838
1522, 1523, 1530, 1533, 1534, 1660
v. Nicholl, 12 Wheat. 505, 317, 771
v. Pacific Railroad, 120 U. S. 227, 1385
v. Percheman, 7 Pet. 51, 1423
v. Port of Mobile, 12 Fed. 768; 4 Woods 536, 67, 412, 1525
v. Powell, 14 Wall. 493, 318
v. Prescott, 3 How. 578, 319, 865
v. Railroad Bridge Co., 6 McLean 317, 687
v. Reese, 92 U. S. 214, 138, 369
v. Rogers, 28 Fed. 607, 311
v. Russell, 13 Wall. 623, 1385
v. Silverman, 4 Dill. 224, 1528
v. Singer, 15 Wall. 111, 318
v. Slater, 4 Wood 356, 369
v. State Bank, 96 U. S. 30, 211
v. Thomas, 15 Wall. 337, 319
v. Tingey, 5 Peters 115, 311
v. Twenty-five Cases of Cloths, Crabbe 356, 106
v. Union Pac. R. Co., 91 U. S. 72, 1018
v. Van Zandt, 11 Wheat. 184, 317, 771
v. Villato, 2 Dallas 370, 132
v. Watts, 1 N. Mex. 553, 319
v. Wells, 2 Cr. C. C. 45, 607
v. Wiley, 11 Wall. 508, 455
v. Williams, 5 McLean 133, 1734
v. Wright, 1 McLean 509, 199
United States Distilling Co. v. City of Chicago, 112 Ill. 19, 1399
United States &c. Ins. Co. v. Poillon, 7 N. Y. S. 834, 1397

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

United States Mort. Co. v. Gross, 93 Ill. 483, 643
United States Trust Co. v. United States Ins. Co., 18 N. Y. 199, 692
United States Water-Works Co. v. Borough of Du Bois, 176 Pa. St. 439, 717
University &c. v. Skidmore, 87 Tenn. 155, 1502
Unwin v. Wolseley, 1 T. R. 674, 216
Updegraff v. Crans, 47 Pa. St. 103, 297
v. Palmer, 107 Ind. 181, 1573
Upham v. Marsh, 128 Mass. 546, 335
Upington v. Oviatt, 24 Ohio St. 232, 1421
Uppington v. City of New York, 58 N. Y. S. 533, 1378
Upton v. People &c., 176 Ill. 632, 1260
v. Stoddard, 47 N. H. 167, 364
Urquhart v. City of Ogdensburg, 67 N. Y. 71, 1159
v. City of Ogdensburg, 91 N. Y. 67, 821, 1584
Urtel v. City of Flint, 122 Mich. 65, 1334, 1802, 1803
Utter v. Franklin, 172 U. S. 416, 993

V

Vacation of Center St., In re, 115 Pa. St. 247, 1200, 1261, 1262
Vacation of Howard St., In re, 142 Pa. St. 601, 1320
Vail v. City of Attica, 8 Kan. App. 668, 610
v. Long Island R. Co., 106 N. Y. 283, 1563
v. Morris &c. R. Co., 21 N. J. L. 189, 1572
Vale Mills v. Nashua, 63 N. H. 136, 822
Valentine v. City of Boston, 22 Pick. 75, 1557
v. City of St. Paul, 34 Minn. 446, 244
Valley Co. v. Robinson, 32 Neb. 254, 908
Van Allen v. Assessors, 3 Wall. 573, 1501
Van Alstine v. People, 37 Mich. 523, 1133
Van Baalen v. People, 40 Mich. 258, 604, 1405
Van Bergen v. Bradley, 36 N. Y. 316, 1568
Van Brunt v. Town of Flatbush, 128 N. Y. 50, 1175
Van Buren v. Wells, 53 Ark. 368, 496, 606
Van Camp v. Board &c., 9 Ohio St. 406, 1494
Vance v. City of Little Rock, 30 Ark. 435, 1232, 1527, 1532, 1535
v. Hadfield, 22 N. Y. St. 858, 509
Van Cott v. Board &c., 18 Wis. 247, 1722
Vandemark v. Porter, 40 Hun 397, 1559, 1567
Van Denburgh v. President &c., 66 N. Y. 1, 521
Vanderbeck v. Inhabitants &c., 39 N. J. L. 345, 434
Vanderbilt v. Adams, 7 Cowen 349, 673, 1079
Vanderhurst v. Tholcke, 113 Cal. 147, 1369
Vanderpool v. Husson, 28 Barb. 196, 745
Vanderslice v. City of Philadelphia, 103 Pa. St. 102, 1620
Vanderstolph v. Highway Com'rs, 50 Mich. 330, 706
Van De Vere v. City of Kansas, 83 Mo. 488, 1602
v. Kansas City, 107 Mo. 83, 1697
Van Doren v. Mayor, 9 Paige 388, 1723
Vandrice's Petition, 6 Pick. 187, 1085
Van Dusen v. Fridley, 6 Dak. 322, 421
Vandyke v. State, 24 Ala. 81, 770
Vane v. City of Evanston, 150 Ill. 616, 511
Van Eppes v. Board &c., 25 Ala. 460, 774
Van Frachen v. City of Ft. Howard, 88 Wis. 570, 1790
Van Hastrup v. Madison City, 1 Wall. 291, 1001
Van Hook v. Barnett, 4 Dev. L. 268, 312
v. City of Selma, 70 Ala. 361, 502, 1405, 1507
Van Horn v. City of Des Moines, 63 Iowa 447, 264, 786, 1459
v. Kittitas Co., 59 N. Y. S. 883, 872
Van Husan v. Heames, 91 Mich. 519, 583, 584
Van Loan v. Village of Lake Mills, 88 Wis. 430, 1366
Van Orsdall v. Hazard, 3 Hill 243, 199
Vanover v. Davis, 27 Ga. 354, 845, 1542, 1717
Van Pelt v. City of Davenport, 42 Iowa 308, 1207, 1585
v. Littler, 14 Cal. 194, 332
Van Rensselaer v. City of Albany, 15 Abb. N. C. 457, 822
v. Palmatier, 2 How. Pr. 24, 1737
v. Petrie, 2 How. Pr. 94, 1737
Van Sant v. Harlem Stage Co., 59 Md. 330, 622
Van Schaick v. Sigel, 60 How. Pr. 122, 226, 228
Van Sicklen v. Town of Burlington, 27 Vt. 70, 1542
Van Steenbergh v. Bigelow, 3 Wend. 42, 335
Van Swarton v. Commonwealth, 24 Pa. St. 131, 1414
Van Valkenbergh v. Mayor &c., 47 N. J. L. 146, 328
Van Valkenburg v. Brown, 43 Cal. 43, 369
v. City of Milwaukee, 43 Wis. 574, 700, 701
v. Earley, 1 Luz. Leg. Reg. 216, 1745
Van Valkenburgh v. Mayor &c., 63 N. Y. S. 6, 1770
Van Vrankin v. Village of Clifton Springs, 33 N. Y. S. 329, 1363
Van Wormer v. Mayor &c., 15 Wend. 263, 1079, 1083
Varden v. Mount, 78 Ky. 86, 532, 534
Varick v. Smith, 5 Paige 137, 685
Varney v. Justice, 86 Ky. 596, 152
v. Manchester, 58 N. H. 430, 1595
Vason v. City of Augusta, 38 Ga. 542, 497, 1410
Vaughan v. Johnson, 77 Va. 300, 313
Vaughn v. Congdon, 56 Vt. 111, 335
v. Village of Portchester, 15 N. Y. S. 474, 1264
Vaught v. Board &c., 101 Ind. 123, 1580
Vaughtman v. Town of Waterloo, 14 Ind. App. 649, 787, 804
Vaux v. Nesbit, 1 McC. Ch. 352, 134
Vawter v. Franklin College, 53 Ind. 88, 300
Veale v. City of Boston, 135 Mass. 187, 803
Veder v. Town of Lima, 19 Wis. 298, 1028
Veghte v. Power Co., 19 N. J. Eq. 142, 1814
Venable v. Curd, 2 Head 582, 197
Veneman v. Jones, 118 Ind. 41, 1401
Verbeck v. Scott, 71 Wis. 59, 373
Verder v. Village of Little Falls, 100 N. Y. 343, 1579
Verdery v. Village of Summerville, 82 Ga. 138, 1521
Verdin v. City of St. Louis, 131 Mo. 26, 749, 1701

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Vermont &c. R. Co. v. County Com'rs, 10 Cush. 12, 1743
Vestal v. Little Rock, 54 Ark. 321, 391, 392, 393, 398, 399, 400
Vestry &c. v. Jacobs, L. R. 7 Q. B. 47, 1561
Vicksburg v. Marshall, 59 Miss. 563, 1574
v. Tobin, 100 U. S. 430, 1537
Vicksburg &c. R. Co. v. Mayor &c., 48 La. An. 1102, 514
v. Mayor &c., 89 Md. 689, 1349
Vidal v. Mayor &c., 2 How. 127, 563, 664
Vidalat v. City of New Orleans, 43 La. An. 1121, 801
Vider v. City of Chicago, 164 Ill. 354, 931, 1780
Vigeant v. City of Marlborough, 175 Mass. 459, 1777
Vigo Tp. v. Board &c., 111 Ind. 170, 947, 957
Village of Belknap v. Miller, 52 Ill. App. 617, 477
Village of Ballston Spa v. Markham, 11 N. Y. S. 826, 1395
Village of Betholto v. Conley, 9 Ill. App. 339, 541
Village of Braceville v. Doherty, 30 Ill. App. 645, 503, 1404
Village of Brooklyn v. Smith, 104 Ill. 429, 676
Village of Buffalo v. Harling, 50 Minn. 551, 1736
v. Webster, 10 Wend. 99, 100, 505, 580, 1412
Village of Bureau Junction v. Long, 56 Ill. App. 458, 1332, 1358
Village of Carthage v. Frederick, 122 N. Y. 268, 658, 1328, 1383
Village of Cerro Gordo v. Rawlings, 135 Ill. 36, 1395
Village of Corning v. Rector &c., 33 N. Y. St. 766, 564
Village of Coulterville v. Gillen, 72 Ill. 599, 1400
Village of Cullom v. Justice, 161 Ill. 372, 1786
Village of Evart v. Postal, 86 Mich. 325, 314
Village of Fort Edward v. Fish, 33 N. Y. S. 784, 734
Village of Fulton v. Tucker, 3 Hun 529, 1344, 1588, 1598
Village of Glenville v. Englehart, 19 Ohio C. C. 285, 180
Village of Grandville v. Jenison, 84 Mich. 54, 1566
Village of Green Bay v. Holsinger, 76 Mo. App. 567, 1386
Village of Hammond v. Leavitt, 181 Ill. 416, 1131, 1148, 1277
Village of Hartington v. Luge, 33 Neb. 623, 392, 399
Village of Harvey v. Wilson, 78 Ill. App. 544, 611
Village of Hinsdale v. Shannon, 182 Ill. 312, 512
Village of Hyde Park v. Borden, 94 Ill. 26, 571, 1175, 1283
v. Carton, 132 Ill. 100, 501, 1130, 1259
v. City of Chicago, 124 Ill. 156, 396, 401
Village of Itasca v. Schroder, 182 Ill. 192, 1708
Village of Jefferson v. Chapman, 127 Ill. 438, 1590, 1619, 1620
Village of Kent v. Dana, 100 Fed. 56, 1006, 1018
v. Dethridge &c. Glass Co., 10 Ohio C. C. 629, 733
Village of Ladd v. Jones, 61 Ill. App. 584, 573
Village of Le Roy, In re, 55 N. Y. S. 611, 1131
Village of Lockporte v. Richards, 81 Ill. 533, 1333
Village of Louisville v. Webster, 108 Ill. 414, 1392
Village of Mansfield v. Moore, 24 Ill. 133, 1330, 1334, 1596, 1628, 1629
Village of Marysville v. Schoonover, 78 Ill. App. 189, 646, 926, 1800
Village of Morgan Park v. Gahan, 136 Ill. 515, 1186
v. Gahan, 35 Ill. App. 646, 754
v. Wizwall, 155 Ill. 262, 1231, 1235
Village of Niagara Falls v. Salt, 45 Hun 41, 1401
Village of North Alton v. Dorsett, 59 Ill. App. 612, 1211
Village of North Springfield v. City of Springfield, 140 Ill. 165, 397
Village of Oak Harbor v. Kallager, 52 Ohio St. 183, 1363
Village of Pine City v. Munch, 42 Minn. 342, 1107, 1108, 1125, 1737
Village of Ponca v. Crawford, 23 Neb. 662, 1638
Village of Port Jervis v. First Nat'l Bank, 96 N. Y. 550, 1345, 1598, 1599
Village of Rankin v. Smith, 63 Ill. App. 592, 1359
Village of St. Bernard v. Kemper, 60 Ohio St. 244, 1136, 1246
Village of St. John v. McFarlan, 33 Mich. 72, 830
Village of St. Johnsbury v. Thompson, 59 Vt. 300, 110, 111, 466
Village of St. Marys v. Lake Erie &c. R. Co., 60 Ohio St. 136, 505, 590
Village of Seneca Falls v. Zalinski, 8 Hun 571, 1599
Village of Shelby v. Clagett, 46 Ohio St. 549, 1324
Village of Sheridan v. Hibbard, 119 Ill. 307, 1628
Village of Sorento v. Johnson, 52 Ill. App. 659, 794
Village of Stamford v. Fisher, 17 N. Y. S. 609, 1395
Village of Tarrytown v. Pocontico Water-works Co., 1 N. Y. S. 394, 1448
Village of Vicksburg v. Briggs, 102 Mich. 551, 599
Village of Wapella v. Davis, 39 Ill. App. 592, 1422, 1423
Village of West Duluth v. Norton, 65 N. W. 935, 1274
Village of Western Springs v. Hill, 177 Ill. 634, 519, 1167
Village of Winooski v. Gokey, 49 Vt. 282, 526
Villavaso v. Barthet, 39 La. An. 247, 516, 1403
Vinal v. Inhabitants &c., 7 Gray 59, 1612
Vincennes University v. Indiana, 14 How. 268, 4, 6, 46, 47, 447
Vincennes Water-Supply Co. v. White, 124 Ind. 376, 745
Vincent, In re, 57 N. Y. S. 771, 1823, 1828
v. Board &c., 52 Mich. 340, 1675
v. Cram, 57 N. Y. S. 771, 1823, 1828
v. Inhabitants &c., 12 Cush. 103, 210, 251, 647, 668
v. Lincoln Co., 30 Fed. 749, 1736
Violette v. City Council &c., 92 Va. 561, 1242, 1243, 1268, 1269
Virginia v. Rives, 100 U. S. 313, 140
Virginia &c. R. Co. v. County Com'rs &c., 6 Nev. 68, 990
v. Elliott, 5 Nev. 358, 698, 701, 702

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Virgo, In re, 20 Ont. App. 435, 1387
Vivian v. Otis, 24 Wis. 518, 322, 324
Voegtly v. Pittburgh &c. R. Co., 2 Grant Cas. 243, 693
Vogel v. City of Antigo, 81 Wis. 642, 828, 942
v. City of West Plains, 73 Mo. App. 588, 1331
v. Little Rock, 54 Ark. 335, 392
v. Little Rock, 55 Ark. 609, 391, 398, 399
Vogelgesang v. City of St. Louis, 139 Mo. 127, 1333, 1374
Voght v. City of Buffalo, 133 N. Y. 463, 720, 1197
v. City of Detroit, 123 Mich. 547, 1310
Von Der Leith v. State, 60 N. J. L. 46, 524
Von Hoffman v. City of Quincy, 4 Wall. 535, 89, 412, 453, 765, 766, 1523, 1527, 1531
Von Phul v. Hammer, 29 Iowa 222, 54
Von Schmidt v. Widber, 105 Cal. 151, 644, 733, 873
Voorhies v. Mayor &c., 70 Tex. 331, 919
Vosburg v. McCrary, 77 Tex. 568, 98, 625
Vose v. Inhabitants &c., 64 Maine 229, 866
Vroman v. Dewey, 23 Wis. 530, 423

W

Wabash &c. Co. v. Beers, 2 Black 448, 760
Wabash R. Co. v. City of Defiance, 52 Ohio St. 262, 10 Ohio C. C. 27, 1314, 1315
Wabash &c. R. Co. v. Farver, 111 Ind. 195, 745
v. McCleave, 108 Ill. 368, 1528
Wabaska Elec. Co. v. City of Wymore, 60 Neb. 199, 788, 1384, 1407, 1704
Waco Water &c. Co. v. City of Waco, 27 S. W. 675, 740
Wade v. Borough of Oakmont, 165 Pa. St. 479, 727
v. City of Newbern, 77 N. C. 460, 260, 261, 262
v. City of Richmond, 18 Gratt. 583, 384, 387, 651, 1517, 1519
v. Travis Co., 174 U. S. 499, 916
Wadleigh v. Gilman, 12 Maine 403, 594, 1121, 1391
Wadsworth v. Supervisors, 102 U. S. 534, 625, 996
v. Wadsworth, 12 N. Y. 376, 134
v. Wendell, 5 Johns. Ch. 224, 1015
Waffle v. Short, 25 Kan. 503, 316
Wager v. Troy Union R. Co., 25 N. Y. 526, 682
Waggeman v. Village of North Peoria, 155 Ill. 545, 1211
Waggener v. Town of Point Pleasant, 42 W. Va. 798, 1341
Wagon Co. v. Byrd, 119 N. C. 460, 993
Wahle v. Reinbeck, 76 Ill. 322, 1104
Wahlgreen v. City of Kansas City, 42 Kan. 243, 1258
Waite v. City of Santa Cruz, 89 Fed. 619, 195, 197, 999, 1005, 1011, 1021
Waitz v. Ormsby Co., 1 Nev. 370, 1736
Wakefield v. Newport, 62 N. H. 624, 266
v. Patterson, 25 Kan. 709, 350, 372, 1473
v. Phelps, 37 N. H. 295, 523
Wakeham v. St. Clair Tp., 91 Mich. 15, 1603, 1632
Wakeley v. City of Omaha, 58 Neb. 245, 1237, 1286
Walchus v. Highlands, 4 Bush 547, 1252
Walden v. Dudley, 49 Mo. 419, 1515
Waldo v. Wallace, 12 Ind. 569, 189, 192, 1418
Waldraven v. Mayor &c., 4 Coldw. 431, 169, 201
Waldron v. Haverhill, 143 Mass. 582, 803, 815, 1159
v. Lee, 5 Pick. 323, 1519
Wales v. City of Muscatine, 4 Iowa 302, 1745
Walish v. City of Milwaukee, 95 Wis. 16, 1776
Walker v. British Guarantee Ass'n, 18 Q. B. 277, 320
v. Chapman, 22 Ala. 116, 318
v. City of Ann Arbor, 111 Mich. 1, 1338
v. City of Ann Arbor, 118 Mich. 251, 1269
v. City of Aurora, 140 Ill. 402, 500, 1175, 1234, 1271, 1421
v. City of Cincinnati, 21 Ohio St. 14, 983
v. City of Evansville, 33 Ind. 393, 465
v. City of Kansas City, 99 Mo. 647, 1374, 1580, 1597
v. City of Sedalia, 74 Mo. App. 70, 1772, 1776
v. City of Springfield, 94 Ill. 364, 549, 1508, 1521
v. Decatur Co., 67 Iowa 317, 1802
v. District of Columbia, 6 Mackey 352, 1232
v. Eastern Counties R. Co., 6 Hare 594, 699
v. Jameson, 140 Ind. 591, 515, 740
v. Osgood, 98 Mass. 348, 211
v. People, 166 Ill. 96, 1144
v. People, 170 Ill. 410, 1294
v. Rogan, 1 Wis. 597, 295
v. St. Louis, 15 Mo. 563, 1725
v. Swartwout, 12 Johns. 444, 215, 216
v. Town of Reidsville, 96 N. C. 382, 1633
v. Village of Morgan Park, 175 Ill. 570, 1710
v. Wasco Co., 19 Pac. 81, 1735
Walkley v. City of Muscatine, 6 Wall. 481, 1526, 1527, 1529
Wall v. City of Portland, 35 Or. 89, 1033
v. Monroe Co., 103 U. S. 74, 863, 951, 978
v. Trumbull, 16 Mich. 228, 860
Walla Walla City v. Walla Walla Water Co., 172 U. S. 1, 491, 723, 735, 1347, 1382, 1702, 1808
Wallace v. City of Menasha, 48 Wis. 79, 781, 818, 1726
v. City of New York, 65 N. Y. S. 855, 1305
v. City of Richmond, 94 Va. 204, 1384
v. Fletcher, 30 N. H. 434, 1566
v. Karlenoweski, 19 Barb. 118, 705
v. Lawyer, 54 Ind. 501, 1191, 1745
v. Mayor &c., 29 Cal. 180, 210, 236, 646
v. Muscatine, 4 Greene 373, 8
v. Shelton, 14 La. An. 498, 1269, 1270
v. Trustees &c., 84 N. C. 164, 104
Waller v. Wood, 101 Ind. 138, 1095
Wallick v. City of Manitowoc, 57 Wis. 9, 1222
Walling v. Mayor &c., 64 N. J. L. 203, 1815
Wallingford v. Southington, 16 Conn. 435, 1054, 1060
Wallis v. Johnson School Tp., 75 Ind. 368, 216, 217, 862
Waln's Heirs v. City of Philadelphia, 99 Pa. St. 330, 482

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Walnut v. Wade, 103 U. S. 683, 987, 1005, 1013, 1020
Walnut Tp. v. Jordan, 38 Kan. 562, 429, 444, 447
Walsh v. Barron, 61 Ohio St. 15, 1291, 1311
v. City of Buffalo, 44 N. Y. S. 940, 1342
v. City of Union, 13 Or. 589, 498, 607
v. Mayor &c., 107 N. Y. 220, 1578
v. Trustees &c., 96 N. Y. 427, 1578
v. Village of Rutland, 56 Vt. 228, 782
Walston v. Nevin, 128 U. S. 578, 1238, 1302
Walter, Matter of, 75 N. Y. 354, 1140
Walters, Ex parte, 65 Cal. 269, 1399
Walters, In re, 32 N. Y. S. 322, 1763
v. Duke, 31 La. An. 668, 1508, 1521
v. Town of Lake, 129 Ill. 23, 1266, 1272
Waltham v. Town of Mullally, 27 Neb. 483, 1059
Walther v. Warner, 25 Mo. 277, 705
Waltmeyer v. Wisconsin &c. R. Co., 64 Iowa 688, 708
Walton v. City of Canon City, 13 Colo. App. 77, 528
v. Riley, 85 Ky. 413, 835
Walworth Bank v. Farmers' Loan &c. Co., 16 Wis. 629, 291
Wapello Co. v. Bigham, 10 Iowa 39, 326
Ward v. City of Little Rock, 41 Ark. 526, 1093
v. City of Murphysboro, 77 Ill. App. 549, 519, 596
v. Cook, 78 Ill. App. 111, 192, 195, 1658
v. Davis, 3 Sandf. 502, 1559
v. Farwell, 97 Ill. 593, 541
v. Flood, 48 Cal. 36, 1494
v. Hartford Co., 12 Conn. 404, 775, 1734, 1735, 1745
v. Maryland, 12 Wall. 418, 137, 138, 1507, 1537
v. Stahl, 81 N. Y. 406, 328, 333
v. Ward, 7 Exch. 838, 1574
Wardens &c. v. Bostock, 2 Bos. & P. N. R. 175, 326
v. Woodward, 26 Maine 172, 346, 347
Ware v. City of Jerseyville, 158 Ill. 234, 1269
v. Percival, 61 Maine 391, 1727
Waring v. Mayor &c., 24 Ala. 701, 523
v. Mayor &c., 60 Ga. 93, 1545
Warner v. Beers, 23 Wend. 103, 45
v. Board &c., 62 Mich. 251, 1673
v. Grace, 14 Minn. 487, 671
v. Knox, 50 Wis. 429, 558
v. Mower, 11 Vt. 385, 274, 349, 355
v. New Orleans, 167 U. S. 467, 958
v. Rising Farm Iron Co., 3 Woods 514, 1020
v. Village of Randolph, 45 N. Y. S. 1112, 1337
Warnick v. Mayo, 15 Gratt. 528, 1412
Warnock v. City of Lafayette, 4 La. An. 419, 292
Warren v. Brown, 21 Neb. 8, 1169, 1170
v. Bunnell, 11 Vt. 600, 688
v. Chandos, 115 Cal. 382, 734, 1150, 1282
v. Charlestown, 2 Gray 84, 15
v. City of Chicago, 118 Ill. 329, 1173, 1174, 1235
v. City of Grand Haven, 30 Mich. 24, 1271
v. City of Independence, 153 Mo. 593, 1800
v. City of Wausau, 66 Wis. 206, 1319
Warren v. Clement, 24 Hun 472, 224
v. Henly, 31 Iowa 31, 1195, 1253
v. Mayor &c., 2 Gray 84, 61, 83, 384, 519, 1517
v. Mayor &c., 22 Iowa 351, 629
v. Russell, 129 Cal. 381, 1136, 1274, 1275, 1304
v. Skinner, 20 Conn. 559, 1488
v. State, 11 Mo. 583, 323
Warren Borough v. Geer, 117 Pa. St. 207, 1537
Warren Co. v. Marcy, 97 U. S. 96, 1001, 1002, 1022, 1026
v. Portsmouth Sav. Bank, 97 U. S. 110, 1026
v. Post, 97 U. S. 110, 1026
v. Ward, 21 Iowa 84, 324
Warrin v. Baldwin, 105 N. Y. 534, 934
Wartman v. City of Philadelphia, 33 Pa. St. 202, 601, 1403
Washburn v. Board &c., 104 Ind. 321, 193, 842, 1035, 1040
v. City of Oshkosh, 60 Wis. 458, 103, 1515, 1516, 1517, 1518
v. Phillips, 2 Met. 296, 1743
Washer v. Bullitt Co., 110 U. S. 558, 1577
Washington v. Mayor &c., 1 Swan 177, 1168, 1198, 1271
v. Mayor &c., 2 Swan 364, 1168
v. State, 13 Ark. 752, 1508, 1521
Washington Ave., In re, 69 Pa. St. 352, 1195, 1231, 1254, 1271, 1538
Washington Cemetery v. Prospect Park &c. R. Co., 68 N. Y. 591, 675, 684, 1582
Washington &c. Church v. New York, 20 Hun 297, 1721
Washington Co. v. Wild Co., 12 Colo. 152, 445
Washington Gas Co. v. Seminary, 52 Mo. 480, 217
Washington Ice Co. v. City of Chicago, 147 Ill. 327, 465, 1151
v. Lay, 103 Ind. 48, 343, 1567
Washington &c. R. Co. v. Lacey, 94 Va. 460, 505
Washington Tp. v. Coler, 2 C. C. A. 272, 1027
Waterbury v. Board &c., 10 Mont. 515, 1745
v. City of Laredo, 60 Tex. 519, 181
v. City of Laredo, 68 Tex. 565, 640
v. Town of Darien, 8 Conn. 163, 1748
Water Co. v. Ware, 16 Wall. 566, 745, 1590
Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345, 687
Waters v. Bonvouloir, 172 Mass. 286, 926
v. Carroll, 9 Yerg. 102, 327
v. Leech, 3 Ark. 110, 100, 500
v. Townsend, 65 Ark. 613, 1407
v. Village of Bay View, 61 Wis. 642, 1216
Waters Pierce Oil Co. v. Mayor &c., 47 La. An. 863, 599, 1123
Water Supply Co. &c. v. City of Albuquerque, 9 N. M. 441, 1764
Watertown v. Cady, 20 Wis. 501, 13
Watertown F. Ins. Co. v. Simmons, 131 Mass. 85, 320
Water-Works Co. v. Burkhart, 41 Ind. 364, 106, 675, 685
Watkins v. County Court, 30 W. Va. 657, 9, 1076
v. Walker Co., 18 Tex. 585, 674
Watson v. Bennett, 12 Barb. 196, 260
v. City of Appleton, 62 Wis. 267, 942
v. City of Chicago, 115 Ill. 78, 1198, 1268, 1272

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Watson v. City of Columbia, 77 Mo. App. 267, 1778
v. City of Huron, 97 Fed. 449, 562, 958
v. Commissioners &c., 82 N. C. 17, 1519
v. Corey, 6 Utah 150, 403
v. Crowsore, 93 Ind. 220, 696
v. New York &c. R. Co., 47 N. Y. 157, 693
v. Smith, 26 Pa. St. 395, 328
v. Sutherland, 5 Wall. 74, 655
v. Town Council &c., 5 R. I. 562, 687
v. Town of New Milford, 72 Conn. 561, 727, 791
v. Turnbull, 34 La. An. 856, 572
Watt v. Jones, 60 Kan. 201, 541, 1788
Watts v. McLean, 28 Ill. App. 537, 849, 1496
Watuppa Reservoir v. City of Fall River, 134 Mass. 267, 809
Way v. Town of Center Point, 51 Iowa 708, 415
Waymire v. Powell, 105 Ind. 328, 944
Wayne Co. v. City of Detroit, 17 Mich. 390, 607
Wayne Co. Sav. Bank v. Stockwell, 84 Mich. 587, 1573
Wayne Tp. v. Porter Tp., 138 Pa. St. 181, 1044
Weare v. Sawyer, 44 N. H. 198, 1485
Weaver v. Benjamin, 45 N. Y. St. 95, 1061
v. Cherry, 2 Ohio St. 564, 1536
v. Devendorf, 3 Denio 117, 229, 230, 1727
v. Snow, 60 Ill. App. 624, 541
Webb v. Auspach, 3 Ohio St. 522, 333
v. Herne Bay Com'rs, L. R. 5 Q. B. 642, 1001
v. La Fayette Co., 67 Mo. 353, 638
v. Neal, 5 Allen 575, 564
Webb City &c. Co. v. City of Carterville, 153 Mo. 128, 877
Webb City &c. Water-Works Co. v. City of Webb City, 78 Mo. App. 422, 727
Webber v. Townley, 43 Mich. 534, 1428
Weber v. Board &c., 59 Cal. 265, 698
v. City of Creston, 75 Iowa 16, 1585
v. Dillon, 7 Okl. 568, 1788
v. Hamilton, 72 Iowa 577, 190
v. Johnson, 30 Mo. App. 601, 488
v. Reinhard, 73 Pa. St. 370, 1266
v. Scott Co. &c. Soc., 44 Iowa 239, 650
v. Traubel, 95 Ill. 427, 1533
Webster v. Byrnes, 34 Cal. 273, 370
v. City of Fargo, 9 N. D. 208, 1303, 1506
v. City of Lansing, 47 Mich. 192, 536
v. Douglas Co., 102 Wis. 181, 956, 1701, 1731
v. People, 98 Ill. 343, 1532
v. Town of Harwington, 32 Conn. 131, 651, 668, 965, 1730
v. Wheeler, 119 Mich. 601, 1685
Webster Co. v. Hutchinson, 60 Iowa 721, 324
v. Taylor, 19 Iowa 117, 941
Weckerly v. Geyer, 11 S. & R. 35, 222
Weckler v. City of Chicago, 61 Ill. 142, 684
Weed v. City of Boston, 172 Mass. 28, 1269, 1713
v. Common Council &c., 56 N. Y. S. 105, 715
v. Mayor &c., 172 Mass. 28, 1267, 1271, 1713
v. Village of Ballston Spa, 76 N. Y. 329, 224, 826, 1587, 1608, 1632
Weeks v. Batchelder, 41 Vt. 317, 362, 1485
v. City of Galveston, 21 Tex. Civ. App. 102, 735
v. City of Milwaukee, 10 Wis. 242, 103, 558, 980
1080, 1503, 1518, 1521, 1534
v. Dennett, 62 N. H. 2, 156, 619
v. Forman, 16 N. J. L. 237, 527, 1410
Weet v. Trustees &c., 16 N. Y. 161, 813, 831
Wehn v. Commissioners &c., 5 Neb. 494, 676
Weidman v. Board &c., 7 N. Y. S. 309, 1480, 1491
Weightman v. Clark, 103 U. S. 256, 981, 1538
v. Washington, 1 Black 39, 8, 813
Weil v. Greene Co., 69 Mo. 281, 1737
v. Ricord, 24 N. J. Eq. 169, 1089
Weill v. Kenfield, 54 Cal. 111, 1257
Weimer v. Bunburg, 30 Mich. 201, 1049
Weinckle v. New York &c. R. Co., 15 N. Y. S. 689, 588
Weir v. Borough of Plymouth, 148 Pa. St. 566, 1217
v. State, 96 Ind. 311, 1676
Weirs v. Jones Co., 80 Iowa 351, 776
Weis v. City of Madison, 75 Ind. 241, 1177, 1179
Weisenberg v. City of Appleton, 26 Mass. 56, 1618
Weismer v. Village of Douglas, 64 N. Y. 91, 1542
Weisse v. City of Detroit, 105 Mich. 482, 1340
Weith v. City of Wilmington, 68 N. C. 24, 97, 468, 494
Weitz v. Independent Dist., 78 Iowa 37, 1482
v. Independent Dist., 79 Iowa 423, 851, 1480
Welch v. Bowen, 103 Ind. 252, 520
v. City of Portland, 77 Maine 384, 1625
v. County Court &c., 29 W. Va. 63, 433
v. Gleason, 28 S. C. 247, 335
v. Hotchkiss, 39 Conn. 140, 552, 1391
v. Inhabitants &c., 133 Mass. 529, 1623
v. Seymour, 28 Conn. 387, 326
v. Ste. Genevieve, 1 Dillon 130, 124, 272, 289, 447, 451
v. Strother, 74 Cal. 413, 886
Weld v. Brook, 152 Mass. 297, 1630
Welker v. Potter, 18 Ohio St. 85, 54, 1132, 1254, 1255, 1550, 1552
Weller v. City of Burlington, 60 Vt. 28, 263, 782, 827
v. McCormick, 47 N. J. L. 397, 1198, 1588
Welles v. Battelle, 11 Mass. 477, 1427
Wellman v. Board &c., 58 Hun 224, 1443
Wells v. Board &c., 78 Mich. 260, 1484
v. Burbank, 17 N. H. 393, 51, 84, 345
v. Burnham, 20 Wis. 112, 1257
v. City of Brooklyn, 38 N. Y. S. 309, 1326
v. City of Brooklyn, 41 N. Y. S. 143, 1105
v. City of Brooklyn, 60 N. Y. S. 802, 1339
v. City of Milwaukee, 70 N. W. 1071, 1284
v. Jackson &c. Co., 47 N. H. 235, 346
v. Mayor &c., L. R. 10 C. P. 402, 261
v. Mayor &c., 43 Ga. 67, 572, 1543
v. Mayor &c., 107 Ga. 1, 1554
v. Rhodes, 114 Ind. 467, 697, 1572

[References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.]

Wells v. Somerset &c. R. Co., 47 Maine 345, 674
v. Supervisors, 102 U. S. 625, 625, 982, 984
v. Town of Salina, 119 N. Y. 280, 839
v. Western Paving &c. Co., 96 Wis. 116, 1284
v. Wood, 114 Cal. 255, 1280
Welsford v. Weidlin, 23 Kan. 595, 1258
Welsh v. Boston, 126 Mass. 442, 1386
v. City of Lansing, 111 Mich. 589, 1339
v. City of St. Louis, 73 Mo. 71, 1374, 1608
v. First Div. R. &c. Co., 25 Minn. 314, 1019, 1020
v. Taylor, 134 N. Y. 450, 1565
v. Village of Rutland, 56 Vt. 228, 1096
v. Wilson, 101 N. Y. 254, 1582
Welton v. State, 91 U. S. 275, 1576
v. Town of Wolcott, 45 Conn. 329, 1061
Wendell v. City of Brooklyn, 29 Barb. 204, 178
v. Mayor &c., 4 Abb. App. Dec. 563, 1619
v. Mayor &c., 39 Barb. 329, 1615
Wentworth v. Rochester, 63 N. H. 244, 1569
v. Smith, 44 N. H. 419, 1614
v. Town of Summit, 60 Wis. 281, 1622
Wenzlich v. McCotter, 87 N. Y. 122, 1345, 1588
Werner v. City of Galveston, 72 Tex. 22, 1535
Werth v. City of Springfield, 78 Mo. 107, 1801, 1802
Wertz v. Blair Co., 66 Pa. St. 18, 1058, 1063
Wesch v. Common Council &c., 107 Mich. 149, 174
Wessman v. City of Brooklyn, 40 N. Y. St. 698, 1159
Wesson v. Saline, 73 Fed. 917, 1006, 1012
v. Town of Mt. Vernon, 98 Fed. 804, 1004
West v. Ballard, 32 Wis. 168, 652
v. Bancroft, 32 Vt. 367, 1543
v. Berry, 98 Ga. 402, 731
v. City of Chehalis, 12 Wash. 369, 874
v. City of Columbus, 20 Kan. 633, 537
v. City of Eau Claire, 89 Wis. 31, 1317, 1337
v. City of Lynn, 110 Mass. 514, 1612
v. Town of Errol, 58 N. H. 233, 869
v. West &c. R. Co., 61 Miss. 536, 696
West Boston Bridge Co. v. County Com'rs, 10 Pick. 270, 679
West Carroll Parish v. Gaddis, 34 La. An. 928, 629
West Chester Gas Co. v. Chester Co., 30 Pa. St. 232, 1512
West Chester &c. R. Co. v. McElwee, 67 Pa. St. 311, 1627
West Chicago Park Com'rs v. City of Chicago, 152 Ill. 392, 1769
v. Kincade, 64 Ill. App. 113, 738
v. McMullen, 134 Ill. 170, 1317, 1319
v. Metropolitan &c. R. Co., 186 Ill. 246, 1287
West Chicago St. R. Co. v. City of Chicago, 178 Ill. 339, 1248
v. People, 155 Ill. 299, 1145, 1241
West Jersey Tract. Co. v. Shivers, 58 N. J. L. 124, 465
West Philadelphia &c. R. Co. v. City of Philadelphia, 10 Phila. 70, 1184
West Plains Tp. v. Sage, 69 Fed. 943, 16 C. C. A. 553, 1011, 1013, 1757
West River Bridge Co. v. Dix, 6 How. 507, 637, 674, 691, 1323
Westall v. Altschul, 126 Cal. 164, 1282, 1370
Western College v. City of Cleveland, 12 Ohio St. 375, 225, 251, 264, 756, 799
Western Pav. &c. Co. v. Citizens' St. R. Co., 128 Ind. 525, 1158, 1184
Western Pub. House v. Bachman, 2 S. Dak. 512, 1495
Western R. Co. v. Nolan, 48 N. Y. 513, 1723, 1724
Western &c. R. Co. v. Young, 83 Ga. 512, 491
Western Sav. Soc. v. City of Philadelphia, 31 Pa. St. 175, 468, 764, 996, 1333, 1543, 1546
Western Town Lot Co. v. Lane, 7 S. D. 599, 876
Western U. Tel. Co. v. Carew, 15 Mich. 525, 100
v. City of Richmond, 26 Gratt. 1, 1513
v. City of Syracuse, 53 N. Y. S. 690, 712
v. Mayer, 28 Ohio St. 521, 1508
v. Mayor &c., 38 Fed. 552, 1390
v. State, 55 Tex. 314, 1521
v. Thayer, 28 Ohio St. 521, 1521
Westfield Borough v. Tioga Co., 150 Pa. St. 152, 1557, 1575, 1577, 1580
Weston v. City of Syracuse, 158 N. Y. 274, 514, 717, 720, 721, 722, 1755
v. City of Syracuse, 31 N. Y. S. 186, 1309
v. Syracuse, 17 N. Y. 110, 877, 1464
Wetherell v. Devine, 116 Ill. 631, 1084
Wetherill v. Pennsylvania R. Co., 195 Pa. St. 160, 1318
Wethington v. City of Owensboro, 21 Ky. L. 960, 525
Wetmore v. Story, 22 Barb. 414, 275
Wettengel v. City of Denver, 20 Colo. 552, 1386
Wewell v. City of Cincinnati, 45 Ohio St. 407, 1255
Weymire v. Wolfe, 52 Iowa 533, 1641
Weymouth v. City of New Orleans, 40 La. An. 344, 581
Weymouth &c. Dist. v. County Com'rs, 108 Mass. 142, 1538, 1539
Whalen v. City of La Crosse, 16 Wis. 271, 1254
Whalin v. City of Macomb, 76 Ill. 49, 1421
Whann v. Coler, 159 N. Y. 535, 1033
Whaples v. City of Waukegan, 179 Ill. 310, 1134, 1135, 1236
Wharton v. School Directors, 42 Pa. St. 358, 1471, 1540
Wharton Co. v. Ahldag, 84 Tex. 12, 904
Wheat v. Smith, 50 Ark. 266, 185
Wheeler v. Bedford, 54 Conn. 244, 1675
v. Bowery Sav. B'k, 20 Abb. N. C. 243, 1415
v. Brady, 15 Kan. 26, 1475
v. City of Boone, 108 Iowa 235, 1316, 1374
v. City of Chicago, 57 Ill. 415, 1201
v. City of Cincinnati, 19 Ohio St. 19, 264, 786
v. City of Plymouth, 116 Ind. 158, 264, 820, 830
v. City of Poplar Bluff, 149 Mo. 36, 746, 1144, 1152

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Wheeler v. Jackson, 41 Hun 410, 829
v. Miller, 16 Cal. 124, 1744
v. Patterson, 1 N. H. 88, 221
v. Wayne Co., 31 Ill. App. 299, 834
Wheeling v. Black, 25 W. Va. 266, 168, 538, 1418, 1420
Wheelock v. Young, 4 Wend. 647, 674
Whidden v. Cheever, 69 N. H. 142, 1762, 1763
v. Drake, 5 N. H. 13, 1745
Whipple v. Village of Fair Haven, 63 Vt. 221, 827
Whirley v. Whiteman, 1 Head 610, 794
Whitcher v. Town of Benton, 48 N. H. 157, 1571
White, In re, 43 Fed. 913, 1399
v. Board &c., 129 Ind. 396, 805, 1076
v. Bond Co., 58 Ill. 297, 9, 775
v. Burkett, 119 Ind. 431, 1659
v. Chowan Co., 90 N. C. 437, 9
v. City of Alameda, 124 Cal. 95, 180
v. City of Alton, 149 Ill. 626, 1275
v. City of New Orleans, 15 La. An. 667, 253
v. City of Quanah, 27 S. W. 839, 71
v. City of Saginaw, 67 Mich. 33, 570, 1131, 1254, 1255
v. City of Tacoma, 20 Wash. 361, 1280
v. Commissioners &c., 13 Or. 317, 369, 370
v. Conover, 5 Blackf. 462, 697
v. Corporation of Yazoo City, 27 Miss. 357, 264, 1585
v. County Com'rs, 13 Or. 317, 651
v. Fleming, 114 Ind. 560, 276, 1169
v. Fox, 22 Maine 341, 318
v. Harris, 116 Cal. 470, 1140
v. Hart, 13 Wall. 646, 1524
v. Hindley Local Board, L. R. 10 Q. B. 219, 812
v. Inhabitants &c., 77 Maine 396, 178
v. Inhabitants &c., 10 Met. 108, 211
v. Levy, 93 Ala. 484, 1415
v. Marshfield, 48 Vt. 20, 225
v. Mayor &c., 119 Ala. 476, 915
v. Mayor &c., 44 N. Y. S. 454, 796
v. Metropolitan &c. R. Co., 154 Ill. 620, 1706
v. Morse, 139 Mass. 162, 334
v. People, 94 Ill. 604, 1143
1166, 1167, 1235, 1268, 1303, 1499
v. Polk Co., 17 Iowa 413, 182
v. School Dist., 8 Atl. 443, 1480
v. Snell, 5 Pick. 425, 1305
v. Tallman, 26 N. J. L. 67, 532
v. Town of Stamford, 37 Conn. 578, 858
v. Town of West Chicago, 164 Ill. 196, 1296
v. Vermont &c. R. Co., 21 How. 575, 1012, 1018
v. White, 2 Met. 185, 132
Whiteback v. Common Council &c., 50 Mich. 86, 1725
White Deer Tp. Poor Overseers' Appeal, 95 Pa. St. 191, 1062
Whitehall v. Meaux, 8 Ill. App. 182, 528
Whitehead v. Arkansas &c. R. Co., 28 Ark. 460, 698
Whitesell v. Northampton Co., 49 Pa. St. 526, 1500
White S. M. Co. v. Mullins, 41 Mich. 339, 319
Whiteside v. People, 26 Wend. 634, 276, 305
v. United States, 93 U. S. 247, 210, 217, 647
Whitfield v. City of Meridan, 66 Miss. 570, 1614
Whitfield v. Longest, 6 Ired. L. 268, 533
Whitford v. Laidler, 94 N. Y. 145, 260
Whiting v. City of Mt. Pleasant, 11 Iowa 482, 415, 426
v. Mayor &c., 106 Mass. 89, 1722
v. Quackenbush, 54 Cal. 306, 1268
v. Sheboygan &c. R. Co., 25 Wis. 167, 548, 610, 622, 983
v. Town of Potter, 18 Blatchf. 165, 1023
v. Town of West Point, 88 Va. 905, 854, 1545, 1546, 1547
v. Townsend, 57 Cal. 515, 1253
Whitlock v. West, 26 Conn. 406, 517
Whitlock Ave., In re, 64 N. Y. S. 717, 1294, 1311
Whitmer v. Commissioners, 96 Ill. 289, 1170
Whitmore v. Village of Tarrytown, 137 N. Y. 409, 1209
Whitney, In re, 33 N. Y. S. 838, 1675
v. City of Lynn, 122 Mass. 338, 701
v. City of New Haven, 58 Conn. 450, 277, 279, 284, 924
v. City of Pittsburgh, 147 Pa. St. 351, 1258
v. City of Port Huron, 68 Mich. 268, 480, 933
v. City of Ticonderoga, 37 N. Y. St. 135, 1609
v. Common Council &c., 69 Mich. 189, 292, 296, 300, 304, 475
v. Inhabitants &c., 111 Mass. 368, 362, 1519
v. Thomas, 23 N. Y. 281, 229
v. Town of Essex, 42 Vt. 520, 1598
Whitney Arms Co. v. Barlow, 63 N. Y. 62, 650, 746
Whitsett v. Union D. & R. Co., 10 Colo. 243, 263, 652, 1317, 1320
Whitson v. City of Franklin, 34 Ind. 392, 537, 1356
Whittaker v. City of Deadwood, 12 S. D. 608, 513, 1298, 1781
v. Tuolumne Co., 96 Cal. 100, 1734
Whittal v. City of New York, 64 N. Y. S. 250, 1362
Whittemore v. Sills, 76 Mo. App. 248, 720
Whitty v. City of Oshkosh, 106 Wis. 87, 1365, 1790, 1793
Whyte v. City of Kansas, 22 Mo. App. 409, 699, 701
v. Mayor &c., 2 Swan. 364, 282, 499, 547, 614, 1198, 1539
v. Mills, 64 Miss. 158, 911
Wice v. Chicago &c. R. Co., 193 Ill. 357, 501, 1383
Wickware v. Bryan, 11 Wend. 545, 221
Wickwire v. City of Elkhart, 144 Ind. 305, 750
Wider v. City of East St. Louis, 55 Ill. 133, 1531, 1538
Widner v. State, 49 Ark. 172, 618, 1489
Wier's Appeal, 74 Pa. St. 230, 1108, 1119
v. Bush, 4 Litt. 429, 168
Wiesmer v. Village of Douglas, 64 N. Y. 91, 979
Wiggin v. City of St. Louis, 135 Mo. 558, 1330
v. Elder &c., 8 Met. 301, 275
v. Mayor, 9 Paige 16, 1421
v. St. Louis, 135 Mo. 558, 1339
Wiggins v. City of Chicago, 68 Ill. 372, 529, 1536
v. Hathaway, 6 Barb. 632, 226
v. McCleary, 49 N. Y. 346, 1565
v. Tallmadge, 11 Barb. 457, 1559, 1565
Wiggins Ferry Co. v. East St. Louis, 102 Ill. 560, 1399, 1508, 1521

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 1502
Wight v. Phillips, 36 Maine 551, 1570
Wilber v. City of Springfield, 123 Ill. 395, 1140
Wilberding v. City of Dubuque, 11 Iowa 484, 1798
Wilbur v. City of Springfield, 123 Ill. 395, 1267
v. Tobey, 16 Pick. 177, 134
Wilcox v. City of Chicago, 107 Ill. 334, 772, 789, 1767, 1768
v. Deer Lodge Co., 2 Mont. 574, 981, 1531
v. Engle Tp., 81 Mich. 271, 1489
v. Hemming, 58 Wis. 144, 519, 532, 533
v. Rodman, 46 Mo. 322, 183
v. Smith, 5 Wend. 231, 195
Wild v. Deig, 43 Ind. 455, 687, 1425
v. Mayor &c., 47 N. J. L. 406, 798
Wilde v. Dunne, 11 Johns. 459, 278
Wilder v. Board &c., 41 Fed. 512, 883
v. Chicago &c. R. Co., 70 Mich. 382, 558
v. City of Chicago, 26 Ill. 182, 168
v. City of Cincinnati, 26 Ohio St. 284, 1268
v. Mayor &c., 70 Ga. 760, 1508
Wiles v. Hoss, 114 Ind. 871, 1190
Wiley v. City of Columbus, 109 Ga. 295, 1791
v. Corporation of Bluffton, 111 Ind. 152, 129
v. Flournoy, 30 Ark. 609, 1722
v. Parmer, 14 Ala. 627, 1537
v. People, 36 Ill. App. 609, 1374
v. Silliman, 62 Ill. 170, 973, 1005
v. Town of Brimfield, 69 Ill. 306, 985
Wilhelm v. Cedar Co., 50 Iowa 254, 663
Wilkes v. Dinsman, 7 How. 39, 221
v. Mayor &c., 79 N. Y. 621, 1205
Wilkey v. City of Pekin, 19 Ill. 159, 1502, 1550
Wilkie v. City of Chicago, 188 Ill. 444, 1388
Wilkin v. St. Paul &c. R. Co., 16 Minn. 271, 692
Wilkins v. City of Detroit, 46 Mich. 120, 1233
v. Mayor &c., 30 N. Y. S. 424, 746
v. Village of Rutland, 61 Vt. 336, 782, 809, 1608
Wilkinson v. Bixler, 88 Ind. 574, 700
v. Cheatam, 43 Ga. 258, 980, 1529, 1542
v. City of Peru, 61 Ind. 1, 1001
v. Leland, 2 Peters 627, 763, 992
v. Long Rapids Tp., 74 Mich. 63, 859, 967, 1088
v. Van Orman, 70 Iowa 230, 883, 897
Willamette Mfg. Co. v. Bank &c., 119 U. S. 191, 1689
Willard v. Albertson, 23 Ind. App. 164, 1152, 1246, 1788, 1792, 1806
v. Comstock, 58 Wis. 565, 1717, 1728
v. Inhabitants &c., 12 Pick. 227, 227, 867
v. Killingworth, 8 Conn. 247, 88
v. Pike, 59 Vt. 202, 1486
v. Presbury, 14 Wall. 676, 1234
v. Warden &c., 8 Conn. 248, 365, 540
Willett v. Young, 82 Iowa 292, 215, 915
Willey v. Greenfield, 30 Maine 452, 866
v. Portsmouth, 35 N. H. 303, 348, 367, 1597
Williams's Case, 3 Bland Ch. 186, 220, 1520
v. Bagot, 3 B. & C. 772, 207
Williams v. Bergin, 127 Cal. 578, 1246, 1308, 1785
v. Bergin, 129 Cal. 461, 748, 1289
v. Board &c., 61 Kan. 708, 796
v. Brooklyn El. R. Co., 126 N. Y. 96, 1582
v. Cammack, 27 Miss. 209, 1269, 1270
v. Carey, 73 Iowa 194, 1319
v. City Council &c., 4 Ga. 509, 535, 541, 594, 601, 1414
v. City of Brooklyn, 53 N. Y. S. 1007, 1333
v. City of Gloucester, 148 Mass. 256, 159
v. City of New Orleans, 32 La. An. 507, 1394
v. City of Pittsburg, 83 Pa. St. 71, 698
v. City of Saginaw, 51 Mich. 120, 802, 1200
v. City of Warsaw, 60 Ind. 547, 607
v. Clayton, 6 Utah 86, 1666
v. Clouse, 91 N. C. 322, 993
v. Corcoran, 46 Cal. 553, 1552
v. Directors, Wright 579, 1494
v. Duanesburg, 66 N. Y. 129, 1010
v. Eggleston Co., 170 U. S. 304, 1302
v. Ehringhaus, 3 Dev. L. 297, 312
v. Hartford &c. R. Co., 13 Conn. 397, 693
v. Inhabitants &c., 119 Mass. 237, 1601
v. Inhabitants &c., 21 Pick. 75, 288, 290, 340, 347, 362, 1283, 1569
v. Mayor &c., 2 Mich. 560, 1232, 1233, 1253, 1722
v. Nashville, 89 Tenn. 487, 383, 388, 446
v. New Orleans R. Co., 60 Miss. 689, 700
v. New York &c. R. Co., 16 N. Y. 97, 682, 1582
v. People, 132 Ill. 574, 368
v. Poor, 65 Iowa 410, 416
v. Powell, 101 Mass. 467, 222
v. Rawlinson, 10 Moore 362, 325
v. Rees, 9 Biss. 405, 1512
v. Roberts, 88 Ill. 11, 992
v. School Dist., 33 Vt. 271, 689, 1536
v. Smith, 2 Hill 301, 1019
v. Smith, 22 Wis. 594, 1109
v. Supervisors &c., 122 U. S. 154, 1166, 1550
v. Town of Roberts, 88 Ill. 11, 985
v. Weaver, 75 N. Y. 30, 229, 230
v. Willard, 23 Vt. 369, 1133
Williamson v. Board &c., 23 Colo. 87, 843
v. City of Keokuk, 44 Iowa 88, 122, 982, 1524
v. Commonwealth, 4 B. Mon. 146, 527, 528, 536, 1410, 1418, 1420
v. Massey, 33 Gratt. 237, 1548
v. New Jersey, 130 U. S. 189, 768
Williamsport v. Commonwealth, 84 Pa. St. 487, 973
Williamstown R. Co. v. Battle, 66 N. C. 540, 1814
Williamstown &c. School Dist. v. Webb, 89 Ky. 264, 362, 1473
Willington, Petitioner, 16 Pick. 87, 1681
Willis v. Board &c., 86 Fed. 872, 1700
v. City of Boonville, 28 Mo. 543, 1412, 1419
v. City of New Berne, 118 N. C. 132, 825, 1317
v. City of Winona, 59 Minn. 27, 1208
v. Legris, 45 Ill. 289, 533
v. Sproule, 13 Kan. 257, 343, 696

[*References are to Pages. Vol. I, pp. 1–832; Vol. II, pp. 833–1830.*]

Willis v. Webb, 27 Pac. 825, 855
Willman v. Willman, 57 Ind. 500, 1572
Wills v. Austin, 53 Cal. 152, 1263
Wilmington Com'rs v. Roby, 8 Ired. L. 250, 1537
Wilson v. Board &c., 133 Ill. 443, 1082, 1084
v. Board &c., 68 Ind. 507, 277
v. Burks, 71 Ga. 862, 1724
v. Chilcot, 12 Colo. 600, 1230
v. City of Boise City, 60 Pac. 84, 791, 1285, 1407, 1711
v. City of Charlotte, 108 N. C. 121, 1451
v. City of New Bedford, 108 Mass. 261, 1112
v. City of New York, 65 N. Y. S. 328, 173, 1763
v. City of Wheeling, 16 W. Va. 323, 265
v. Commissioners &c., 7 Watts & S. 197, 1527, 1743
v. Eureka City, 173 U. S. 32, 1365
v. European &c. R. Co., 67 Maine 358, 693
v. Gabler, 11 S. D. 206, 749
v. Hardesty, 1 Md. Ch. 66, 992
v. Hathaway, 42 Iowa 173, 692
v. Jefferson Co., 13 Iowa 181, 776
v. Lewis, 10 R. I. 285, 1746
v. Marsh, 34 Vt. 352, 221, 229
v. Mayor &c., 88 Ga. 455, 805, 1075
v. Mayor &c., 1 Denio 595, 211 222, 263, 820, 821, 1159, 1506, 1603
v. Mayor &c., 4 E. D. Smith 675, 1502
v. Neal, 23 Fed. 129, 956
v. Pelton, 40 Ohio St. 306, 1263
v. Peverly, 1 Am. L. Cas. 785, 226
v. Poole, 33 Ind. 443, 617, 1288
v. Roberts, 11 C. B. N. S. 50, 127
v. Rockford &c. R. Co., 59 Ill. 273, 705
v. Salamanca, 99 U. S. 499, 885, 995, 998, 1001, 1005, 1009, 1023
v. School District, 32 N. H. 118, 12, 259, 644, 1213, 1480
v. Simmons, 89 Maine 242, 1369
v. Sutter Co. Supervisors, 47 Cal. 91, 1547
v. Town of Spafford, 32 N. Y. 532, 1609
v. Township Board &c., 87 Mich. 240, 1569
v. Wall, 6 Wall. 83, 136
v. Waltersville School Dist., 44 Conn. 157, 344, 363, 1485
v. Webber, 157 N. Y. 693, 754
Wilson Co. v. National Bank, 103 U. S. 770, 1018
Wiltse v. Town of Tilden, 77 Wis. 152, 1587
Winans v. Williams, 5 Kan. 227, 1475
Winbigler v. Mayor &c., 45 Cal. 36, 9, 788, 814, 1594
Winbish v. Hamilton, 47 La. An. 246, 219
Winchester v. Cheshire Co., 64 N. H. 100, 1064
Windfall Mfg. Co. v. Emery, 142 Ind. 456, 63
Windsor v. City of Des Moines, 110 Iowa 175, 715, 747, 878, 879, 881
v. Polk Co., 109 Iowa 156, 1504
Wing v. Glick, 56 Iowa 473, 216
Wingate v. City of Tacoma, 13 Wash. 603, 1286
Winham v. Commissioners, 26 Mo. 406, 1572
Winn v. Board of Park Com'rs, 12 Ky. L. 339, 118
v. City Council &c., 21 Ga. 275, 992
v. State, 7 So. 353, 1473
Winona &c. R. Co. v. City of Watertown, 1 S. D. 46, 1268
v. Waldron, 11 Minn. 515, 674
Winpenny v. Philadelphia, 65 Pa. St. 135, 817
Winship v. Enfield, 42 N. H. 197, 1600, 1613
Winslow v. Commissioners &c., 64 N. C. 218, 1528, 1530
Winspear v. District Tp. &c., 37 Iowa 542, 12
v. Holman Tp., 37 Iowa 542, 890
Winston v. City of Ft. Worth, 47 S. W. 740, 926, 1833
v. Tennessee &c. R. Co., 1 Baxt. 60, 985, 1542
v. Westfeldt, 22 Ala. 760, 1026
Winter v. City Council &c., 65 Ala. 403, 1551
Wintz v. Board, 28 W. Va. 227, 1651
Winzer v. City of Burlington, 68 Iowa 279, 1552
Wisconsin Indust. School &c. v. Clark Co., 103 Wis. 651, 1549
Wisconsin Keeley Inst. Co. v. Milwaukee Co., 95 Wis. 153, 548, 610
Wisconsin &c. R. Co. v. Ashland Co., 81 Wis. 1, 300, 372, 593, 1204
v. Lincoln Co., 67 Wis. 478, 593
v. Taylor Co., 52 Wis. 37, 1513, 1520
Wise v. Foote, 81 Ky. 10, 1373
Wiser v. Blachly, 1 Johns. Ch. 607, 1015
Wisner v. Davenport, 5 Mich. 501, 860
v. People, 156 Ill. 180, 1145, 1281
Wistar v. City of Philadelphia, 80 Pa. St. 505, 1149, 1196
v. City of Philadelphia, 92 Pa. St. 404, 1196
v. City of Philadelphia, 111 Pa. St. 604, 1196, 1233, 1499
Witherll v. Mosher, 9 Hun 412, 786
Witherop v. Titusville School Board, 7 Pa. Co. Ct. Rep. 451, 1476, 1485
Withers v. Buckley, 20 How. 84, 673
Witherspoon v. City of Meridian, 69 Miss. 288, 1560, 1574
Withington v. Inhabitants &c., 8 Cush. 66, 355, 356, 357, 1728
Witkowski v. Bradley, 35 La. An. 904, 1535
v. Skalowski, 46 Ga. 41, 1724
Witman v. City of Reading, 169 Pa. St. 375, 1244, 1268
Witte v. Stifel, 126 Mo. 295, 1790
Witter v. Damitz, 81 Wis. 385, 1561, 1568
Woffenden v. Board of Supervisors &c., 1 Ariz. 237, 1654
Wohrden v. Northwestern R. Co., 54 S. C. 492, 1786
Wolcott v. Lawrence Co., 26 Mo. 272, 638, 1171
v. Town of Wolcott, 19 Vt. 37, 284, 295
Wolf v. Brass, 72 Tex. 133, 1599
v. City of Keokuk, 48 Iowa 129, 1271
v. City of Philadelphia, 105 Pa. St. 25, 1234, 1261
Wolfe v. Erie &c. Tel. Co., 33 Fed. 320, 1609
Wolff v. New Orleans, 103 U. S. 358, 233, 412, 766, 1523, 1531, 1534
Wolfson v. Township Board &c., 63 Mich. 49, 1675
Wolsey v. Board, 32 Iowa 130, 1572
Wong v. City of Astoria, 13 Or. 538, 541
Wood, In re, 54 N. Y. S. 30, 1505
v. Bangs, 1 Dak. 179, 840
v. Bartling, 16 Kan. 109, 378
v. Board &c., 125 Ind. 270, 909

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Wood v. City of Brooklyn, 14 Barb. 425, 97, 468, 494, 536
v. City of Danbury, 72 Conn. 69, 1804
v. City of Galveston, 76 Tex. 126, 1206, 1256
v. City of Hinton, 47 W. Va. 645, 811, 1394
v. City of Seattle, 23 Wash. 1, 470, 506, 508, 513, 1812, 1815
v. City of Watertown, 58 Hun 298, 1591
v. Cutter, 138 Mass. 149, 302
v. Ensel, 63 Mo. 193, 1757
v. Inhabitants, 11 Cush. 487, 363
v. McGrath, 150 Pa. St. 451, 1182
v. Nation Water-Works Co., 33 Kan. 590, 572
v. President &c., 9 Cow. 194, 61, 83, 1422, 1423
v. Simmons, 51 Hun 325, 1066
v. Simons, 110 Mass. 116, 365
v. Stirman, 37 Tex. 584, 1727
v. Strother, 76 Cal. 545, 1256, 1649
v. Town of Oxford, 97 N. C. 227, 370, 984
Woodbridge v. Amboy, 1 N. J. L. 213, 431
Woodbury v. City of Detroit, 8 Mich. 274, 1198
v. Inhabitants &c., 6 Pick. 227, 867
v. Parshley, 7 N. H. 237, 1814
Woodcock v. Bolster, 35 Vt. 632, 1475
v. City of Worcester, 138 Mass. 268, 1626
Woodhull v. City of New York, 150 N. Y. 450, 792
Woodman v. Metropolitan R. Co., 149 Mass. 335, 1779
v. Tufts, 9 N. H. 88, 1095
Woodruff v. Catlin, 54 Conn. 277, 710
v. Eureka Springs, 55 Ark. 618, 391, 399
v. Fisher, 17 Barb. 224, 1084
v. Neal, 28 Conn. 165, 629, 1221
v. Okolona, 57 Miss. 806, 1017
v. Paddock, 130 N. Y. 618, 1574
v. Stewart, 63 Ala. 206, 529
v. Town of Glendale, 23 Minn. 537, 1025, 1026
v. Town of Glendale, 26 Minn. 78, 1125
Woods v. City of Chicago, 135 Ill. 582, 511, 1145
v. Colfax Co., 10 Neb. 552, 9
v. Dennett, 9 N. H. 55, 1053
v. Henry, 55 Mo. 560, 1517
v. Inhabitants, 111 Mass. 357, 1613
v. Miller, 30 App. Div. 232, 1768
Woodward v. Collett, 20 Ky. L. 1066, 747, 749
v. Town of Rutland, 61 Vt. 316, 174
Woodyer v. Hadden, 5 Taunt. 125, 1559
Wo Lee, In re, 26 Fed. 471, 1400
Woolley v. Baldwin, 101 N. Y. 688, 222
Worcester v. Ballard, 38 Vt. 60, 1059
v. Proprietors &c., 16 Pick. 541, 1625
Worden v. City of New Bedford, 131 Mass. 23, 811, 1068
v. Inhabitants &c., 131 Mass. 23, 666
Work v. State, 2 Ohio St. 296, 1414
Workman v. City of New York, 63 Fed. 298, 795
Worley v. Harris, 82 Ind. 493, 64
v. Town of Cicero, 110 Ind. 208, 1552
Wormley v. District Tp., 45 Iowa 666, 1480
Wormwood v. City of Waltham, 144 Mass. 184, 936
Worster v. Forty-Second St. R. Co., 50 N. Y. 203, 1108
Worth v. Commissioners, Winst. Eq. 70, 1500, 1507, 1722
Worthey v. Badgett, 32 Ark. 496, 1535
Worthington v. City of Covington, 82 Ky. 265, 260, 1254
v. Wade, 82 Tex. 26, 1561
Wortman, Matter of, 22 Abb. N. C. 137, 1649
Worts v. City of Watertown, 16 Fed. 534, 1737
Wragg v. Penn Tp., 94 Ill. 11, 607
Wray v. Mayor &c., 46 Pa. St. 365, 593, 1233, 1234
Wreford v. People, 14 Mich. 41, 1093
Wren v. Luzerne Co., 9 Pa. Co. Ct. 22, 173
Wright v. Bishop, 88 Ill. 302, 651, 1699, 1701
v. Carter, 27 N. J. L. 76, 682
v. Chicago &c. R. Co., 7 Ill. App. 438, 517
v. City Council &c., 78 Ga. 241, 263
v. City of Boston, 9 Cush. 233, 1234, 1498, 1726
v. City of Chicago, 20 Ill. 252, 1101, 1232
v. City of Mt. Vernon, 60 N. Y. S. 1017, 71
v. City of San Antonio, 50 S. W. 406, 576, 1549, 1685, 1800, 1805
v. City of Tacoma, 3 Wash. T. 410, 1258
v. City of Wilmington, 92 N. C. 156, 822
v. Corporation of Georgetown, 4 Cranch C. C. 534, 1224
v. Forrestal, 65 Wis. 341, 476, 1322
v. Harris, 31 Iowa 272, 328
v. Inhabitants &c., 132 Mass. 49, 1639
v. Linn, 9 Pa. St. 433, 664
v. Nagle, 101 U. S. 791, 510, 565, 1463, 1808
v. North School Dist., 53 Conn. 576, 359, 363, 1477, 1485
v. People, 87 Ill. 582, 1253, 1540
v. Rouss, 18 Neb. 234, 335
v. Simpson, 6 Ves. 714, 320
v. Southwestern R. Co., 64 Ga. 782, 1288
v. Town Clerk of Stockport, 5 Man. & G. 33, 128
v. Town of Victoria, 4 Tex. 375, 628
Wrought Iron Bridge Co. v. Jasper Tp., 68 Mich. 441, 867
v. Town of Attica, 2 N. Y. S. 359, 1172
Wullenwaber v. Dunigan, 30 Neb. 877, 990
v. Dunigan, 33 Neb. 477, 988
Wurts v. Hoagland, 114 U. S. 606, 698
Wyandotte &c. Br. Co. v. Commissioners, 10 Kan. 331, 339
Wyandotte City v. Wood, 5 Kan. 603, 119
Wyandotte Elec. L. Co. v. City of Wyandotte, 124 Mich. 43, 1809, 1812
Wyatt v. City of Rome, 105 Ga. 312, 797
Wyker v. Francis, 120 Ala. 509, 1662
Wyley v. Wilson, 44 Vt. 404, 344, 363
Wyman v. City of Philadelphia, 175 Pa. St. 117, 1343
Wynehamer v. People, 13 N. Y. 378, 677
Wynn v. State, 67 Miss. 312, 1486
Wynne v. Mayor &c., 105 Ga. 614, 1550
v. Wright, 1 Dev. & B. L. 19, 1537
Wyoming Coal Co. v. Price, 81 Pa. St. 156, 675
Wysinger v. Crookshank, 82 Cal. 588, 1494

[*References are to Pages. Vol. I, pp. 1-832; Vol. II, pp. 833-1830.*]

Y

Yaggy v. District Tp. &c., 80 Iowa 121, 1487
Yale v. West Middle School Dist., 59 Conn. 489, 1492
Yanish v. City of St. Paul, 50 Minn. 518, 587
Yarnell v. City of Los Angeles, 87 Cal. 603, 170, 653
Yates v. City of Milwaukee, 92 Wis. 352, 1247, 1709
v. Lansing, 5 Johns. 282, 220
v. Milwaukee, 10 Wall. 497, 676, 1110, 1117, 1121
v. Town of West Grafton, 34 W. Va. 783, 1352
v. Village of Batavia, 79 Ill. 500, 1697
v. Yates, 9 Barb. 324, 664
Yavapai Co. v. O'Neil, 29 Pac. 430, 937
Yeager v. Town of Fairmount, 43 W. Va. 259, 1777
Yeakel v. City of Lafayette, 48 Ind. 116, 1191
Yeatman v. Crandall, 11 La. An. 220, 1270, 1520
Yellow River &c. Co. v. Arnold, 46 Wis. 214, 558
Yelton v. Addison, 101 Ind. 58, 708
Yesler v. City of Seattle, 1 Wash. 308, 374, 489, 1014, 1150
Yick Wo v. Hopkins, 118 U. S. 356, 492, 503, 508, 1083, 1400
York Co. v. Watson, 15 S. C. 1, 320
Yorty v. Paine, 62 Wis. 154, 197, 424
Young v. Black Hawk Co., 66 Iowa 460, 282, 1088
v. Buckingham, 5 Ohio 485, 294
v. Carey, 184 Ill. 613, 415, 1684
v. Carey, 80 Ill. App. 601, 1686
v. Charleston, 20 S. C. 116, 8
v. City Council &c., 20 S. C. 116, 814
v. City of Kansas, 27 Mo. App. 101, 1179, 1180
v. City of St. Louis, 47 Mo. 429, 1199, 1256
v. City of Webb City, 150 Mo. 333, 1359, 1360
v. Clarendon Tp., 132 U. S. 340, 562 637, 973, 974, 981, 982, 1017, 1576
v. Commissioners &c., 2 N. & McC. 537, 8
Young v. Harrison, 17 Ga. 30, 703
v. Laconia, 59 N. H. 534, 697
v. Leedom, 67 Pa. St. 351, 811
v. McKenzie, 3 Ga. 31, 673
v. People, 155 Ill. 247, 1145
v. State, 7 Gill & J. 253, 309, 310
v. Town of Henderson, 76 N. C. 420, 1508, 1521
Young &c. Amuse. Co. v. Atlantic City, 60 N. J. L. 125, 527
Youngblood v. Sexton, 32 Mich. 406, 1506, 1509, 1522, 1722
Youngerman v. Murphy, 107 Iowa 686, 1554
Yule v. City of New Orleans, 25 La. An. 394, 786

Z

Zaack v. N. Y. C. R. Co., 40 N. Y. S. 821, 1314
Zable v. Louisville Baptist Orphans' Home, 92 Ky. 89, 1247
Zabriskie v. Cleveland &c. R. Co., 23 How. 381, 253
v. Jersey City &c. R. Co., 13 N. J. Eq. 314, 1706
v. Railroad Co., 23 How. 381, 61
Zanesville v. Farman, 53 Ohio St. 605, 1375
v. Gas Light Co., 47 Ohio St. 1, 574
Zartman v. State, 109 Ind. 360, 445, 1489
Zeigler v. Chapin, 126 N. Y. 342, 639
v. People, 156 Ill. 133, 1145
Zeller v. Central R. Co., 84 Md. 304, 301
Zettler v. City of Atlanta, 66 Ga. 195, 1637
Ziegler v. Chapin, 13 N. Y. S. 783, 193
v. Flack, 54 N. Y. Super. 69, 1254
v. Hopkins, 117 U. S. 683, 1236, 1257, 1258
v. People, 164 Ill. 531, 1261
Zimmerman v. Canfield, 42 Ohio St. 463, 689
v. Snowden, 88 Mo. 218, 1257
Zoeller v. Kellogg, 4 Mo. App. 163, 1297
Zorger v. City of Greensburgh, 60 Ind. 1, 516
Zottman v. City of San Francisco, 20 Cal. 96, 254, 255, 554, 631, 638, 1212, 1254
Zylstra v. Corporation of Charleston, 1 Bay 382, 535, 1415

COMMENTARIES

ON THE LAW OF

MUNICIPAL CORPORATIONS.

CHAPTER I.

INTRODUCTORY—HISTORICAL VIEW.

SECTION

1. The genus corporation defined.
2. Species of corporations.
3. Public corporations, quasi-public corporations and private corporations.
4. Subdivisions of public corporations.
5. Municipal and public quasi-corporations defined.
6. Subdivisions of strictly public corporations.
7. Definition of the municipal corporation.
8. Definition of the public quasi-corporation.
9. Examples of municipal and public quasi-corporations.
10. Counties.
11. The New England towns.
12. The same subject continued.
13. The state.
14. Long Island towns.
15. The development of the municipal corporation—(a) In general.
16. (b) Greece and Rome.
17. (c) Italy and France—The mediæval cities.
18. Conclusion.

§ 1. **The genus corporation defined.**—The definition of a corporation most familiar to American jurisprudence is that of Chief Justice Marshall, which declares a corporation to be "an artificial being, invisible, intangible, and existing only in contemplation of law."[1] This

[1] The full text of the decision from which the quotation in the text is an extract is as follows:—"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best to effect the object for which it was created. Among the most important are immortality; and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting from hand to hand. It is chief-

phrase of the chief justice, however, though forcible and suggestive, is, as Judge Dillon observes,[2] rather a description than a definition; and the same observation may be made of Mr. Justice Story's statement in the same case, that a corporation is an artificial person existing in contemplation of law, and endowed with certain powers and franchises, which, though they must be exercised through the medium of its natural members, are yet considered as subsisting in the corporation itself as distinctly as if it were a real person.[3] Chancellor Kent defines a corporation as "a franchise possessed by one or more individuals who subsist as a body politic under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual."[4] So, Lord Coke had defined a corporation to be "a body to take in possession framed as to its capacity by policy, and therefore called by Littleton (section 413) a *body politic;* it is called a corporation or body corporate because the persons are made into a body, and are of capacity to take, grant, etc., by a particular name."[5] These definitions, or rather descriptions, are, however, too general to be of practical use, except as suggestions; and they insist too much on the theory that a corporation is strictly a legal or artificial person or individual; ignoring the fact that, while a corporation in most of its relations acts as a unit, and may therefore for the most part be conveniently regarded as a legal person, it is in many of its relations properly conceived of as composed of an aggregation of persons.[6] As has been said, the effort of practical

ly for the purpose of clothing bodies of men in succession with those qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created:" Dartmouth College v. Woodward, 4 Wheat. 518, 636.

[2] 1 Dillon Munic. Corp. 37.

[3] Dartmouth College v. Woodward, 4 Wheat. 518, 667.

[4] 2 Kent Com. 267.

[5] Co. Litt. 250a.

[6] 1 Beach Priv. Corp. 3. Mr. Taylor, in the preface of his work on Corporations, declares that the fiction of the "legal person" has outlived its usefulness, and is no longer adequate for the purposes of an adequate treatment of the legal relations arising through the prosecution of a corporate enterprise. In an article in the American Law Review, Professor Pomeroy approves and amplifies the idea contained in Mr. Taylor's remark, and calls attention to the fact that many modern corporations differ in essentials very little from partnerships, except that they can sue and be sued, make contracts, acquire rights and incur liabilities in and by their corporate names, and that a change of membership does not work their dissolution. He re-

jurisprudence should be to regard it as a unit or collection of persons according to the relation in which it acts in a given instance.[7] The most accurate and serviceable definition of a corporation is, perhaps, that of the earliest writer on the subject, who defines it to be "a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution or the powers conferred upon it, either at the time of its creation or any subsequent period of its existence."[8]

§ 2. **Species of corporations.**—For the purposes of this work, corporations may be properly classified into public and private corporations. This division is recognized by all writers on the subject, although they differ somewhat in limiting the precise boundary between the two classes. In the Dartmouth College case, Mr. Justice Washington discussed at length the proper method of division of corporations.

marks further that the English courts have always carefully distinguished between the statutory joint-stock companies with limited liability (which are practically identical with the corporations formed under the statutes of our several states) and common-law corporations: "Legal Idea of a Corporation," 19 Am. Law Rev. 114, 115, 116. So, also, it has been held in the supreme court of the United States that a suit by or against a corporation is to be regarded for jurisdictional purposes as a suit by or against the stockholders of the corporation: Muller v. Dows, 94 U. S. 444. Where the word "persons" is used in a statute, "corporations are to be deemed and considered as 'persons' when the circumstances in which they are placed are identical with those of natural persons expressly included in such statutes:" Beaston v. Farmers' Bank &c., 12 Peters 102, 134, 135; Crafford v. Supervisors &c., 87 Va. 110; s. c. 12 S. E. 147; 10 L. R. A. 129.

[7] 1 Beach Priv. Corp. 4. For explanatory discussions of this question, see the essay of Prof. Pomeroy above cited, "The Legal Idea of a Corporation," 19 Am. Law Rev. 114, 116, and Lowell Transfers of Stock, § 2. Mr. Lowell insists on the theory that a corporation is strictly distinct from its members. He says: "A corporation is distinct from its members in the same sense that a state is distinct from its citizens. The parallel, indeed, between a state and a corporation is very close."

[8] Kyd Corp. 13. See also, for a good definition of a corporation, Thomas v. Dakin, 22 Wend. (N. Y.) 9, where it is said that a corporation aggregate is an artificial body of men composed of divers individuals, the ligaments of which body are the franchises and liabilities bestowed upon it, and which bind and unite all into one, and in which consists the whole frame and essence of the corporation.

He said: "Public corporations are generally esteemed such as exist for political purposes only, such as towns, cities, parishes and counties; and in many respects they are so, although they involve some private interests; but, strictly speaking, public corporations are such only as are founded by the government for public purposes when the whole interests belong also to the government. If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. For instance, a bank created by the government for its own uses, whose stock is exclusively owned by the government, is in the strictest sense a public corporation. So a hospital created and endowed by the government for general charity. But a bank whose stock is owned by private persons is a private corporation, although it is erected by the government, and its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge and turnpike companies. In all these cases the uses may, in a certain sense, be called public, but the corporations are private; as much so, indeed, as if the franchises were vested in a single person."[9] The division suggested by Mr. Justice Washington may, however, be properly modified in these modern days of immense private corporations, such as railways, canal companies, telegraph companies and express companies, involving public interests and subject to the orders of the public, although maintained generally only for private emolument and of private foundation. The division set forth in a California case seems to conform more nearly to the requirements of modern conditions.

§ 3. Public corporations, quasi-public corporations and private corporations.—Considering the general scope and purpose of corpora-

[9] Dartmouth College v. Woodward, 4 Wheat. 518, 668. See also, on this subject, Osborn v. President &c., 9 Wheat 738; Bank of United States v. Planters' Bank, 9 Wheat. 907; Vincennes University v. Indiana, 14 How. 268; Rundle v. Delaware &c. Canal Co., 1 Wall. Jr. 275, 290; Bonaparte v. Camden &c. R. Co., 1 Bald. 205; Raleigh &c. R. Co. v. Davis, 2 Dev. & B. (N. C.) 451; Alabama &c. R. Co. v. Kidd, 29 Ala. 221; Commonwealth v. Lowell Gas Co., 12 Allen (Mass.) 75; McCune v. Norwich Gas Co., 30 Conn. 521; New York &c. R. Co. v. Metropolitan Gas Co., 63 N. Y. 326; People v. Morris, 13 Wend. (N. Y.) 325, 337; Bailey v. Mayor &c., 3 Hill (N. Y.) 531; Ten Eyck v. Delaware &c. Canal Co., 18 N. J. L. 200; Tinsman v. Belvidere Del. R. Co., 26 N. J. L. 148; Bennett's Appeal, 65 Pa. St. 242; Foster v. Fowler, 60 Pa. St. 27; Bushel v. Commonwealth Ins. Co., 15 S. & R. (Pa.) 173, 186; Directors &c. v. Houston, 71 Ill. 318; Miners' Bank v. United States, 1 Greene (Iowa) 553; Dean v. Davis, 51 Cal. 406.

tions in this country, they may be divided into three general classes,—the first class being public municipal corporations, the object of which is to promote public interests, and which may be called strictly public corporations; the second class being quasi-public corporations, which are technically private but are of a quasi-public character, having in view some public enterprise in which the public interests are involved and owing certain duties to the public as such,—for example, railroad, turnpike and canal companies; and the third class being strictly private corporations, of private foundation, maintained strictly for private emolument and having in view only strictly private enterprises.[10] The difference between strictly private and strictly public corporations is obvious and radical; the former being formed by the voluntary action of the corporators, between whom there exists a contract whereby each subjects his interest, with certain restrictions, to the control of the corporate management for the accomplishment of the ends for which the company was formed;[11] and the latter not being in the same sense voluntary associations, and no contract existing between the members.[12] The distinction, however, between quasi-public and private corporations is much less clearly marked. These quasi-public corporations partake both of the nature of private and of public corporations. They are private corporations in that they are voluntary in their inception, that they are maintained for private gain, and that there subsists a contract between their incorporators. They are public in that they have in view a public enterprise in which the public interests are involved, that their property is devoted to a use in which the public has an interest, and that they are therefore controlled by the public for the common good to the extent of that interest.[13] The old principle of law enunciated by Chief Justice Hale, that when "private property is affected with a public interest it ceases to be juris privati only,"[14] has been greatly extended and amplified in this country by the doctrine of Munn v. Illinois,[15] which doctrine was further applied in the line of decisions known as the "Granger Cases" and the "Railroad Commission Cases." This doctrine is succinctly stated and the limits of the power of the government over these quasi-public corporations is clearly defined in Munn v. Illinois, where it was said:

[10] Miners' Ditch Co. v. Zellerbach, 37 Cal. 543.

[11] Beach Priv. Corp. 42; Clearwater v. Meredeth, 1 Wall. 25; Hays v. Commonwealth, 82 Pa. St. 518; Brown v. Hummel, 6 Pa. St. 86; Hare Amer. Const. Law 600.

[12] Bennett's Appeal, 65 Pa. St. 242; Foster v. Fowler, 60 Pa. St. 27; Bushel v. Commonwealth Ins. Co., 15 S. & R. (Pa.) 173; People v. Morris, 13 Wend. (N. Y.) 325, 337; Dean v. Davis, 51 Cal. 406.

[13] Munn v. Illinois, 94 U. S. 113, 126.

[14] 1 Hargrave's Law Tracts 78.

[15] 94 U. S. 113.

"When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control."[16]

§ 4. **Subdivisions of public corporations.**—It is manifest from the scheme of division indicated in the preceding section that public corporations are naturally divided into the two great classes of strictly public and quasi-public corporations. The courts of this country, however, although, as shown in the preceding section, they have gone to great lengths in enforcing governmental control over quasi-public corporations, have not generally applied the term "public" or "quasi-public" to such corporations, but have with practical unanimity held that if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, it is a private corporation.[17] In reading the cases on this subject, therefore, public corporations are not generally considered to include what we have denominated quasi-public corporations.

[16] Munn v. Illinois, 94 U. S. 113, 126. The doctrine in that case was applied to grain elevators. It has been also applied to railroads: See the "Granger Cases:"—Chicago &c. R. Co. v. Iowa, 94 U. S. 155; Peik v. Chicago &c. R. Co., 94 U. S. 164, 178; also the "Railroad Commission Cases," 116 U. S. 307; s. c. 6 S. Ct. 334, 348, 349, 388, 391, 1191. It has been applied to telephones: Hockett v. State, 105 Ind. 250; s. c. 5 N. E. 178. Also to gas and water companies: State v. Ironton Gas Co., 37 Ohio St. 45; Spring Valley Water-Works v. Schottler, 110 U. S. 347, 350; s. c. 4 S. Ct. 48. See on this subject, 1 Beach Priv. Corp. 34–37, 55–59; "The Dartmouth College Case and Private Corporations," by William P. Wells, 9 Am. Bar. Assoc. Rep. 229; Address by James A. Garfield, 5 Leg. Gaz. 408; "The Doctrine of Presumed Dedication of Private Property to Public Use," by George Ticknor Curtis (John Wiley & Sons, N. Y., 1881).

[17] Rundle v. Delaware &c. Canal Co., 1 Wall. Jr. 275, 290; Vincennes University v. Indiana, 14 How. 268; Bank of United States v. Planters' Bank, 9 Wheat. 907; Bonaparte v. Camden &c. R. Co., 1 Bald. 205; Alabama R. Co. v. Kidd, 29 Ala. 221; New York &c. R. Co. v. Metropolitan Gas Co., 63 N. Y. 326; Bailey v. Mayor &c., 3 Hill (N. Y.) 531; Directors &c. v. Houston, 71 Ill. 318; Miners' Bank v. United States, 1 Greene (Iowa) 553; Ten Eyck v. Delaware &c. Canal Co., 18 N. J. L. 200; Tinsman v. Belvidere Del. R. Co., 26 N. J. L. 148; McCune v. Norwich Gas Co., 30 Conn. 521; Raleigh &c. R. Co. v. Davis, 2 Dev. & B. (N. C.) 451. It has been held in Georgia that a corporation deriving part of its support from the government was not necessarily a public corporation: Cleveland v. Steward, 3 Ga. 283. And the

§ 5. Municipal and public quasi-corporations defined.—Public corporations may be subdivided into municipal corporations and public quasi-corporations. Municipal corporations embrace incorporated cities, villages and towns, which are full-fledged corporations, with all the powers, duties and liabilities incident to such a status; while public quasi-corporations possess only a portion of the powers, duties and liabilities of corporations. As instances of the latter class may be mentioned counties, hundreds, townships, overseers of the poor, town supervisors, school districts and road districts.[18] It must be borne in mind that public quasi-corporations and quasi-public corporations are entirely distinct classes; the former being represented, as we have said, by townships, counties and such governmental subdivisions of the state, the latter being represented by corporations, the property of which is devoted to a use in which the public has an interest, such as railroads, grain elevators, telegraph companies and similar corporations.

§ 6. Subdivisions of strictly public corporations.—The generic difference between these two classes of corporations lies in the fact that municipal corporations are created at the request or with the consent of their members, and for the promotion of their convenience and welfare; while public quasi-corporations are merely local subdivisions of the state, created by the state of its own sovereign will, without any particular solicitation or request on the part of the members of the corporation, and created almost exclusively with a view to the policy of the state at large. The municipal corporation is asked for, or at least assented to, by the people it embraces; the public quasi-corporation is superimposed by a sovereign and paramount authority.[19]

fact that a corporation was employed in the service of the government has been held not to make it a public corporation: Thomson v. Pacific R. Co., 9 Wall. 579. If the state is a stockholder in a corporation or one of the corporators, the corporation is not a public corporation: Bank of United States v. Planters' Bank, 9 Wheat. 904; Hutchinson v. Western &c. R. Co., 6 Heisk. (Tenn.) 634. But see, contra, Trustees &c. v. Winston, 5 St. & P. (Ala.) 17. In South Carolina a corporation owned in toto by the state was held to be a private corporation: State Bank v. Gibbs, 3 McC. (S. C.) 377.

[18] County Com'rs &c. v. County Com'rs &c., 50 Md. 245; Pulaski Co. v. Reeve, 42 Ark. 54; Askew v. Hale, 54 Ala. 639; Board &c. v. Mighels, 7 Ohio St. 109; Rouse v. Moore, 18 Johns (N. Y.) 407; Town of North Hempstead v. Town of Hempstead, 2 Wend. (N. Y.) 109; Fourth School Dist. v. Wood, 13 Mass. 193; Mower v. Inhabitants, 9 Mass. 247; Damon v. Granby, 2 Pick. (Mass.) 345, 352; Riddle v. Proprietors &c., 7 Mass. 169; Adams v. President &c., 1 Maine 363.

[19] Board &c. v. Mighels, 7 Ohio St. 109. This case contains a clear discussion of the difference between municipal corporations and public

From this fundamental difference in inception flow many minor and consequential differences between the two classes of corporations under discussion. These differences will be more fully considered later herein. The principal differences arise from the fact that public quasi-corporations are purely auxiliaries to the state, and have no powers, duties or liabilities except as conferred expressly by statute; and as a result, in many cases municipal corporations are held responsible for damages to persons injured through negligence or default of the corporation, where there is no express provision of law to that effect;[20] while public quasi-corporations, being mere subdivisions of

quasi-corporations. See also, the cases cited in the preceding section.

[20] The rule stated briefly seems to be, that where a municipal corporation acts for a purpose purely and essentially public—acts as an agent of the state, and nothing more—the corporation is regarded as a part of the sovereign state, and can not be sued for a tort, unless express permission by statute to bring such a suit has been given. But where municipal corporations act, as private corporations, for the local benefit and advantage of their members, they are liable in tort just as a private corporation would be: Mayor &c. v. Lasser, 9 Humph. (Tenn.) 757; O'Neill v. New Orleans, 30 La. An. 220; Brinkmeyer v. City of Evansville, 29 Ind. 187; McConnell v. Dewey, 5 Neb. 385; Kenworthy v. Ironton, 41 Wis. 647; Wallace v. Muscatine, 4 Greene (Iowa) 373; Simmer v. St. Paul, 23 Minn. 408; Young v. Commissioners &c., 2 N. & McC. (S. C.) 537; Curran v. City of Boston, 151 Mass. 505; s. c. 24 N. E. 781; 21 Am. St. 465; 8 L. R. A. 243; 30 Am. & Eng. Corp. Cas. 506; McCombs v. Town Council &c., 15 Ohio 474; Noonan v. Albany, 79 N. Y. 470; s. c. 35 Am. R. 540; Sterling v. Thomas, 60 Ill. 265; Hewison v. New Haven, 37 Conn. 475; Meares v. Wilmington, 9 Ired. L. (N. C.) 73; Gilman v. Laconia, 55 N. H. 130; s. c. 20 Am. R. 175; Commissioners &c. v. Baker, 44 Md. 1; Boyd v. Insurance Patrol &c., 113 Pa. St. 269; s. c. 6 Atl. 536; Barnes v. District of Columbia, 91 U. S. 540, 551; Evanston v. Gunn, 99 U. S. 660; Chicago v. Robbins, 2 Black 418; Mayor &c. v. Sheffield, 4 Wall. 189; Weightman v. Washington, 1 Black 39; Providence v. Clapp, 17 How. 161; Nebraska City v. Campbell, 2 Black 590; Supervisors &c. v. United States, 4 Wall. 435; Petersburg v. Applegarth, 28 Gratt. (Va.) 321; Kiley v. Kansas City, 87 Mo. 103; Little Rock v. Willis, 27 Ark. 572; Makinnon v. Penson, 25 Eng. L. & Eq. 457; Mersey Docks v. Gibbs, 11 H. L. Cas. (N. S.) 686. In New Jersey, Michigan and South Carolina it is held, as an application of this principle, that a municipal corporation is not liable in damages at the suit of one who is injured by its failure to perform the statutory duty of keeping highways in repair, no right of action being expressly given by the statute: Freeholders &c. v. Strader, 18 N. J. L. 108; Pray v. Mayor &c., 32 N. J. L. 394; City of Detroit v. Blackeby, 21 Mich. 84; s. c. 4 Am. R. 450; followed in McCutcheon v. Homer, 43 Mich. 483; s. c. 5 N. W. 668; 38 Am. R. 212; Young v. Charleston, 20 S. C. 116; s. c. 47 Am. R. 827. But these cases are opposed to the overwhelming weight of authority: City of Galveston v. Posnainsky, 62 Texas 188, in

the state, and created solely for a public purpose, are not liable in tort in the absence of a statute expressly creating such liability and authorizing an action thereon.[21] The doctrines just enumerated have the support of an overwhelming majority of the cases on the subject. There are, however, authorities holding that municipal corporations are not in any case liable in tort unless such liability is established by express statute.[22]

§ 7. **Definition of the municipal corporation.**—In the English Municipal Corporations Act, 1882, the municipal corporation is defined to be "the body corporate constituted by the incorporation of the inhabitants of a borough,"[23] and in the same section the borough is defined to be "a city or town to which this act applies." The municipal corporation has also been tersely defined to be "the investing of the people of a place with the local government thereof."[24] An old writer has said: "The essence of a municipal corporation is constituted by uniting the several circumstances between a corporation and other communities."[25] The meaning of this statement seems to be

which the authorities are exhaustively cited and discussed (City of Navasota v. Pearce, 46 Texas 525, where a contrary rule was applied, is deprived of any value); Dillon Munic. Corp., § 996 et seq.; Beach Contr. Neg., § 244.

[21] Sherbourne v. Yuba Co., 21 Cal. 113; s. c. 81 Am. D. 151; Mower v. Inhabitants, 9 Mass. 247; s. c. 6 Am. D. 63; White v. Bond Co., 58 Ill. 297; s. c. 11 Am. R. 65; Clark v. Lincoln Co., 1 Wash. 518; s. c. 20 Pac. 576; 25 Am. & Eng. Corp. Cas. 211; Haygood v. Justices &c., 20 Ga. 845; Symonds v. Clay Co., 71 Ill. 355; Abbett v. Board &c., 114 Ind. 61; s. c. 16 N. E. 127; City of Galveston v. Posnainsky, 62 Tex. 118; Woods v. Colfax Co., 10 Neb. 552; s. c. 7 N. W. 269; Askew v. Hale Co., 54 Ala. 639; Flori v. St. Louis, 69 Mo. 341; Mitchell v. Rockland, 52 Maine 118; Conrad v. Trustees, 16 N. Y. 158; Baxter v. Winoonski Tpk. Co., 22 Vt. 114, 123; Fowle v. Common Council, &c., 3 Peters 398; Boyd v. Insurance Patrol &c., 113 Pa. St. 269; s. c. 6 Atl. 536; Eastman v. Meredith, 36 N. H. 284; s. c. 72 Am. D. 302; Dosdall v. Olmsted, 30 Minn. 96; s. c. 14 N. W. 458; Brabham v. Board &c., 54 Miss. 363; Hill v. City of Boston, 122 Mass. 344, 351; s. c. 23 Am. R. 332; White v. Chowan Co., 90 N. C. 437; s. c. 47 Am. R. 534; Watkins v. County Court, 30 W. Va. 657; s. c. 5 S. E. 654; 20 Am. & Eng. Corp. Cas. 305; Downing v. Mason Co., 87 Ky. 208; s. c. 8 S. W. 264; 12 Am. St. 473; Kincaid v. Hardin Co., 53 Iowa 430; s. c. 5 N. W. 589; 36 Am. R. 236; City of Detroit v. Blackeby, 21 Mich. 84; Turner v. Woodbury Co., 57 Iowa 440; s. c. 10 N. W. 827; Finch v. Board of Education, 30 Ohio St. 37; Pray v. Mayor &c., 32 N. J. L. 394.

[22] Arkadelphia v. Windham, 49 Ark. 139; s. c. 4 S. W. 450; 4 Am. St. 32; 18 Am. & Eng. Corp. Cas. 347; Winbigler v. Mayor &c., 45 Cal. 36.

[23] English Municipal Corporations Act, 1882, § 10.

[24] Cudden v. Eastwick, 1 Salk. 143. This definition has been quoted with approval in People v. Morris, 13 Wend (N. Y.) 325, 334, and in People v. Hurlbut, 24 Mich. 44.

[25] Glover Munic. Corp. 6.

that by combining the characteristics of a community, such as a city, with those of a corporation, the idea of a municipal corporation is obtained. Bouvier defines a municipal corporation to be a public corporation created by the government for political purposes and having subordinate and local powers of legislation.[26] The idea of a municipal corporation has been frequently defined and described by the courts of this country. Thus it has been said in Missouri that the definition of a municipal corporation would only include organized cities and towns and other like organizations with political and legislative powers for the local civil government and police regulation of the inhabitants of particular districts included in the boundaries of the corporation.[27] In Pennsylvania a municipal corporation has been declared to be a public corporation created by the government for political purposes, and having subordinate and local powers of legislation,—an incorporation of persons, inhabitants of a particular place or connected with a particular district, enabling them to conduct its local civil government, and to be merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of the government.[28] In a Tennessee decision it was said that a municipal corporation was a body corporate and politic established by law to share in the civil government of the country, but chiefly to regulate the local or internal affairs of the city, town or district incorporated.[29] These definitions, though useful, are too narrow to meet the requirements of a broad and general definition of the idea. The following excellent definition has been given: "A municipal corporation is a body politic specially chartered by the state or voluntarily organized under a general legislative act, including both territory and inhabitants, for the purpose of local government subsidiary to that of the state; or (as in England) it may be a similar body which has acquired governmental powers and privileges by prescription."[30] Judge Dillon's fine definition leaves little if anything further to be desired. He says: "We may therefore define a municipal corporation, in its historical and proper sense, to be the incorporation by the authority of the government of the inhabitants of a particular place or district, and authorizing them in their corporate capacity to exer-

[26] Bouvier's Law Dict., tit. Municipal Corporations.

[27] Heller v. Stremmel, 52 Mo. 309.

[28] Philadelphia v. Fox, 64 Pa. St. 180.

[29] East Tennessee University v. Knoxville, 6 Baxt. (Tenn.) 166.

[30] 15 Am. & Eng. Encyc. of Law 952, tit. Municipal Corporations, § 1, continuing: "A municipal corporation, in its broader sense, is a body politic, such as a state, and each of the governmental subdivisions of the state, such as counties, parishes, townships, hundreds, New England towns, and school districts, as well as cities and incorporated towns, villages and boroughs."

cise subordinate specified powers of legislation and regulation with respect to their local and internal concerns. This power of local government is the distinctive purpose and the distinguishing feature of a municipal corporation proper."[31] The definition should, however, be amplified to embrace the well-settled principle that the term "municipal corporation" embraces both the territory and its inhabitants.[32] It follows from this definition that the citizens of the incorporated territory, together with that territory, form the municipal corporation.[33] Neither the municipal government nor the officers of that government are the corporation: they are merely its agents.[34] As popularly and loosely used, the term "municipal corporation" frequently includes the public quasi-corporations, such as counties, school districts, and like bodies, the nature of which has been discussed in the preceding sections.

§ 8. **Definition of the public quasi-corporation.**—The preceding sections indicate the essential differences between the municipal and the public quasi-corporation. The latter may be defined to be an involuntary political or civil division of the state, created by general laws to aid in the administration of government.[35] An eminent judge has said of this class of corporations: "They may be considered under our institutions as quasi-corporations with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained by the general use of authority which belongs to these metaphysical persons by the common law."[36] Counties, townships, school districts, road districts and like public quasi-corporations do not usually possess corporate powers under special charters; but they exist under general laws of the state, which apportion the territory of the state into political divisions for convenience of government, and require of the people residing within those divisions

[31] Dillon Munic Corp., § 20.

[32] Kelly v. Pittsburg, 104 U. S. 78; Galesburg v. Hawkinson, 75 Ill. 152, 156; People v. Bennett, 29 Mich. 451.

[33] Lowber v. Mayor &c., 5 Abb. Pr. (N. Y.) 325; Clarke v. Rochester, 24 Barb. (N. Y.) 446.

[34] Baumgartner v. Hasty, 100 Ind. 575; City of Valparaiso v. Gardner, 97 Ind. 1; s. c. 49 Am. R. 416; Brown v. Gates, 15 W. Va. 131; Lowber v. Mayor &c., 5 Abb. Pr. (N. Y.) 325; Clarke v. Rochester, 24 Barb. (N. Y.) 446; Queen v. York, 2 Q. B. 847; s. c. 2 G. & D. 105; Harrison v. Williams, 3 B. & C. 162; Queen v. Paramore, 10 Ad. & El. 286; Queen v. Mayor &c., 10 Ad. & El. 281; Queen v. Mayor &c., 41 L. J. Q. B. 115; Queen v. Mayor &c., 4 Q. B. 796; s. c. Dav. & M. 143; Queen v. Thompson, 5 Q. B. 477; s. c. Dav. & M. 497.

[35] Dillon Munic. Corp., § 25. This definition is applied by Judge Dillon to counties only, but is sufficiently general to answer as a definition of the class.

[36] Opinion of Parker, C. J., in Inhabitants &c. v. Wood, 13 Mass. 193, 197.

the performance of certain public duties as a part of the machinery of the state, and, in order that they may be able to perform these duties, vest them with certain corporate powers.[37]

§ 9. Examples of municipal and public quasi-corporations.—As may be gathered from the preceding sections, the distinction between these two classes of corporations is obvious. As a result, however, of looseness of nomenclature in the statutes of the various states affecting this subject, it is frequently a matter of doubt to which class a particular corporation should be assigned. Thus where the Missouri statute provided that no person should be eligible to a certain office who held office under a municipal corporation, it was held that the incorporated board of public schools was not a municipal corporation within the meaning of the act.[38] And in general, school districts are considered public quasi-corporations of the most limited powers.[39] On the other hand, the constitution of Iowa prohibited a political or municipal corporation from incurring indebtedness to an amount exceeding five per cent. on the taxable property of the corporation, and a school district township was considered to come within the prohibition.[40] The police juries of the Louisiana parishes are considered municipal corporations.[41] In the constitution of Wisconsin the term

[37] Cooley Const. Lim. 294. In City of Galveston v. Posnainsky, 62 Texas 118, a quasi-corporation is spoken of as "a subdivision of a state, created solely for a public purpose, by a general law applicable to all such subdivisions;" and again, as being "created to carry out a policy common to the whole state, and not mainly to advance the interest of the particular locality, and to bring advantage or emolument to the inhabitants of the municipality." Still again, "they are created for a public purpose as an agency of the state through which it can most conveniently and effectively discharge the duties which the state, as an organized government, assumes to every person and by which it can best promote the welfare of all." See also, the cases cited in the preceding section.

[38] Heller v. Stremmel, 52 Mo. 309.

[39] Harris v. School District, 8 Fost. (N. H.) 58. In this case it was said:—"These little corporations have sprung into existence within a few years, and their corporate powers and those of their officers are to be settled by the constructions of the court upon a succession of crude, unconnected and often experimental enactments. School districts are in New Hampshire quasi-corporations of the most limited powers known to the law." See also, Foster v. Lane, 30 N. H. 305; Giles v. School District, 31 N. H. 304; Wilson v. School District, 32 N. H. 118; Rogers v. People, 68 Ill. 154; Scales v. Chattahoochee Co., 41 Ga. 225; Beach v. Leahy, 11 Kan. 23.

[40] Winspear v. District Tp. &c., 37 Iowa 542; Curry v. District Tp. &c., 62 Iowa 104; s. c. 17 N. W. 191; Clark v. Thompson, 37 Iowa 536. See also, School Dist. v. Williams, 38 Ark. 454.

[41] Police Jury &c. v. Mayor &c., 38 La. An. 630.

"municipal corporation" has been held not to include towns; and consequently, when the same term is used in the statutes of that state, towns are not considered to be within the meaning of the provisions of the statute unless the legislative intent to include them is clear.[42] The term "city," of course, applies only to municipal corporations,[43] as does the word "village."[44] The District of Columbia is a municipal corporation.[45]

§ 10. **Counties.**—Counties are, of course, to be classified as public quasi-corporations under the scheme of division that has been indicated in this chapter; as a county is an involuntary civil division of the state created by statute to aid in the administration of the government. In an Ohio case it is said: "Counties are at most but local organizations, which, for the purposes of civil administration, are invested with a few functions characteristic of a corporate existence. * * * They are local subdivisions of a state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization [referring to municipal corporations] is asked for, or at least assented to by the people it embraces; the latter [referring to counties] is superimposed by a sovereign and paramount authority."[46] But notwithstanding this radical difference, the county is much more nearly allied to the municipal corporation than are other quasi-corporations, such as school districts, townships, and other like bodies, as the county has a much more compact organization than those corporations, and possesses generally much fuller powers. Consequently there is some conflict in the decisions as to whether the term "municipal corporation" should be construed to include counties. In the large majority of cases the natural division is followed and counties are held not to be included by that term.[47] But both in Iowa and in Minnesota counties have

[42] Eaton v. Supervisors &c., 44 Wis. 489; Norton v. Peck, 3 Wis. 714; State v. Milwaukee, 20 Wis. 87; Watertown v. Cady, 20 Wis. 501; Crane v. Fond du Lac, 16 Wis. 196. As to what constitutes a corporation created "for municipal purposes," see State v. Leffingwell, 54 Mo. 458.

[43] Mitchell v. Treasurer &c., 25 Ohio St. 143. As to what is not a municipal corporation, see Stephens v. Felton, 99 Ky. 395; s. c. 35 S. W. 1116; 18 Ky. L. 248. A city is not a political subdivision of the state: Parker v. Zeisler, 139 Mo. 298; s. c. 40 S. W. 881.

[44] City of Wahoo v. Reeder, 27 Neb. 770; s. c. 43 N. W. 1145.

[45] Stoutenburgh v. Hennick, 129 U. S. 141; s. c. 9 S. Ct. 256.

[46] Board &c. v. Mighels, 7 Ohio St. 109; County Com'rs &c. v. County Com'rs &c., 50 Md. 245.

[47] Askew v. Hale Co., 54 Ala. 639; s. c. 25 Am. R. 730; Board &c. v. Mighels, 7 Ohio St. 109; Sherman Co. v. Simons, 109 U. S. 735; s. c. 3 S. Ct. 502; Commissioners &c. v.

been declared to be municipal corporations within the meaning of statutes affecting such corporations;[48] and a provision in the constitution of Alabama authorizing "municipal corporations" to take property by right of eminent domain was held to include counties.[49] In Pennsylvania, also, a city which was coterminous with a county, and which had assumed the liability of the county, was held to be bound by a statute imposing a liability on "counties."[50]

§ 11. **The New England towns.**—The New England town represents an intermediate stage between the municipal and the public quasi-corporation, having many of the powers peculiar to the former class, and at the same time performing many of the functions of a township or county, and being subject in many respects to the limitations of a public quasi-corporation. It lacks the representative feature that is generally so essential in the government of a municipal corporation. As was said in a Massachusetts decision: "The marked and characteristic distinction between a town organization and that of a city is that in the former all of the qualified inhabitants meet, deliberate, act and vote in their natural and personal capacities, whereas in a

Commissioners &c., 92 U. S. 307; Maury Co. v. Lewis Co., 1 Swan (Tenn.) 236; Barton Co. v. Walser, 47 Mo. 189; Granger v. Pulaski Co., 26 Ark. 37; Green Co. v. Eubanks, 80 Ala. 204; Lawrence Co. v. Chattaroi R. Co., 81 Ky. 225; County Com'rs &c. v. County Com'rs &c., 50 Md. 245; Pulaski Co. v. Reeve, 42 Ark. 55; Soper v. Henry Co., 26 Iowa 264; State v. Leffingwell, 54 Mo. 458; People v. Common Council &c., 28 Mich. 228. In the case just cited Judge Cooley said:—"It is because, where an urban population is collected, many things are necessary for their comfort and protection which are not needed in the country, and which the county and townhip organizations, with their imperfect powers and machinery, can not well supply, that the state is then called upon to confer larger powers, and to make of the locality a subordinate commonwealth, which, while it shall perform for the state, wholly or in part, what the county and township officers performed before, shall also be endowed with capacities to provide for its citizens such matters of necessity or convenience as their health, protection, comfort or enjoyment as a political community may demand." In Wisconsin, also, the term "counties" or "municipal corporations" has been construed to include only cities and villages and other strictly municipal corporations, but not to include school districts and like bodies: Eaton v. Supervisors &c., 44 Wis. 489.

[48] Iowa &c. Land Co. v. Carroll Co., 39 Iowa 151; Dowlan v. Sibley Co., 36 Minn. 430; s. c. 31 N. W. 402. In the latter case the term was used in the amendment to the constitution of the state concerning the assessment of property for local improvements.

[49] Ex parte Selma &c. R. Co., 45 Ala. 696. See also, Askew v. Hale Co., 54 Ala. 639; s. c. 25 Am. R. 730; Greene Co. v. Eubanks, 80 Ala. 204.

[50] Philadelphia v. Commonwealth, 52 Pa. St. 451.

city government this is all done by their representatives."[51] These towns have only the powers conferred on them by statute. As was said by Mr. Justice Gray in the supreme court of the United States: "Towns in Connecticut, as in the other New England towns, differ from trading corporations and even from municipal corporations elsewhere. They are territorial corporations, into which the state is divided by the legislature from time to time at its discretion, for political purposes and the convenient administration of government; they have those powers only which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs, and all the inhabitants of the town are members of the quasi-corporation."[52] This plan of municipal government by the citizens without representation is of course impracticable when the towns become populous; and accordingly, as the population of the county increased, regularly incorporated cities, governed on the principle of representation, were created by the legislature; so that in New England the two classes of municipalities now exist side by side, the smaller towns being governed and administered by the whole body of citizens, while the affairs of the larger cities are directed by a representative body, or common council, such as is to be found in the cities of other states. The people of New England were and still are, with reason, much attached to their peculiar local system of town government, and only adopted with reluctance the representative system. Thus in Massachusetts the legislature incorporated no city before 1820, and Boston retained its town government, where each citizen had an immediate voice in the direction of its policy, until 1822, although it had at that time about seven thousand qualified voters.[53] The statutory provisions regulating the powers of these towns are numerous, and have been frequently judicially construed. They will be considered at length in a subsequent portion of this work.[54] This peculiar system,

[51] Warren v. Charlestown, 2 Gray (Mass.) 84, 101. See also, an interesting essay on the "Municipal Court of Boston, and its Justices," 2 L. Rep. 225.

[52] Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865.

[53] Hill v. City of Boston, 122 Mass. 344; Quincy Munic. Hist. of Boston, ch. 1. See also, as to the subject of New England towns, Commonwealth v. Roxbury, 9 Gray (Mass.) 451; 1 Swift's System 116; Eastman v. Meredith, 36 N. H. 284. In the latter case it is said that the decisions relating to English municipal corporations are but remotely applicable to New England towns, inasmuch as English municipal corporations are, for the most part, voluntary corporations, between which and the government contractual relations exist; while New England towns are involuntary corporations, having given no assent to their creation, and having been incorporated by virtue of no contract, express or implied, with the state.

[54] See Stetson v. Kempton, 13 Mass. 272; Hooper v. Emery, 14 Me. 375;

exhibiting an example of pure democracy, has worked well, giving to these towns an honest, virile and independent government.[55]

§ 12. **The same subject continued.**—By some of the earliest legislation, under the charter of the province of Massachusetts, the boundaries of all existing towns were confirmed, and the towns were empowered to assess and levy taxes to maintain schools and support the poor, and meet other necessary charges, and were declared for the first time capable of suing and being sued.[56] When the constitution of the state was adopted it was declared that "the inhabitants of every town within this government are hereby declared to be a body politic and corporate."[57] In Massachusetts, which may be taken as the typical New England state, no provision was made for incorporating cities proper until 1820, when the second amendment to the constitution of that state was passed.[58] In Howard's Local Constitutional History of the United States, we find these interesting statements regarding the New England town: "It was the parish of the Stuarts, already in some places passing into the hands of an irresponsible oligarchy, the select vestry, with which the pioneers of New England were acquainted. But it was not this institution which they introduced into the new world. In the transplanting of English local organisms to American soil two remarkable phenomena attract atten-

Coolidge v. Inhabitants, 114 Mass. 592. Judge Dillon has exhaustively discussed this subject in his work on Municipal Corporations, §§ 28–30.

[55] Quincy Munic. Hist. of Boston, ch. 1; Bryce Amer. Com., chs. 48, 49.

[56] Prov. Stats. 1692–93 (4 W. & M.), ch. 28; 1694–95 (6 W. & M.), ch. 13; 1 Prov. Laws (State ed.), 64, 66, 181; Anc. Chart., 247, 249, 279.

[57] Stat. 1785, ch. 75, § 8; Rev. Stat., ch. 15, § 8; Gen. Stat., ch. 18, § 1.

[58] The second amendment to the constitution of Massachusetts provides that "the general court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this commonwealth" (thus recognizing the difference between the existing towns and a true city government), "and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings: Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose; and provided also, that all by-laws made by such municipal or city government shall be subject at all times to be annulled by the general court."

tion. On the one hand there is so much that is new in constitutional names and functions, so much of original expedient and experimentation, as to render New England town government almost unique, while, at the same time, its continuity in general outline with that of the mother country can be plainly discerned. On the other hand occurs a most interesting example of institutional retrogression,—many features of the primitive village community are revived. The colonists go back a thousand years and begin again; or, to speak with greater accuracy, new life is infused into customs which, though passing into decay, are yet not wholly extinct in the old English home. All this is perfectly natural. It is a case of revival of organs and functions on recurrence of the primitive environment."[59]

§ 13. **The state.**—A state is a body politic, or society of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.[60] In this country the term is, of course, applied to the members of the United States. The definition given above applies to the states of this country, and it is clear from that definition that each state is in many important respects a corporation. Although consisting of many members, it acts as a unit, under a special denomination, having perpetual succession under an artificial form, and is vested with the capacity of acting in many respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued.[61] But the state is sovereign, and all other corporations are its creatures—saving the corporations created by the federal government. The state, therefore, notwithstanding its similarity or identity in essentials with a corporation, is not so denominated in the ordinary nomenclature of the subject. Thus, in Iowa, it has been held that the term "bodies political and corporate," as used in the statute of limitations, does not include the state;[62] and in Georgia the state is not included in the term "corporation" used in the United States revenue statutes.[63] The state, being sovereign,

[59] Local Const. Hist. of the United States, by George E. Howard, 1889, vol. 1, ch. 2.

[60] Cooley Const. Lim. 1; Vattel, b. 1, ch. 1, § 1; Story on Const. 207; Wheaton Int. Law, pt. 1, ch. 2, § 2; Halleck Int. Law 63; Bouvier's Law Dict., tit. State. It is defined by Burlamaqui to be "A multitude of people united together by a communion of interest, and by common laws to which they submit with one accord:" Burlamaqui Polit. Law, ch. 5. See Chisholm v. Georgia, 2 Dall. 419, 457; Des Moines Co. v. Harker, 34 Iowa 84; Georgia v. Stanton, 6 Wall. 50.

[61] See § 1, ante.

[62] Des Moines Co. v. Harker, 34 Iowa 84.

[63] State v. Atkins, 35 Ga. 315. In that case, Erskine, J., conceding that

can only be sued by its own permission and consent,[64] and to this consent any conditions may be attached, according to the pleasure of the state.[65] The state may be said to be a public quasi-corporation, differing from other public quasi-corporations in that it is sovereign and voluntary.

§ 14. **Long Island towns.**—Long Island towns were a somewhat different organization. They were nearly all created by royal charter. The patents were intended not only to create the corporate bodies and thus clothe the inhabitants with the power of government, but they also served the purpose of grants, and conveyed to the inhabitants the title to the land within the town boundaries.[66] There was never any supremacy of the Dutch over Long Island at its eastern end, and the rights and titles of the towns there are all of English origin, dating to the grant of the Duke of York and the royal charters issued under his government. These charters usually granted the lands described to certain named persons as inhabitants, and created them a body corporate under a given name, and the charter usually recognized the existence of a civil community already occupying the lands granted, having some form of government, and when it did so the officers of that government were made patentees; and it was provided that the lands granted should have relation to the town in

the term in its most comprehensive signification would comprise a state, said:—"So far as my limited researches go, I am unable to discover a single case in the supreme court, or in any of the circuit or district courts of the United States, wherein it has been decided that the term 'corporation'—body corporate or politic—when used in a statute, includes a state, or where the one term is used as a synonym for the other."

[64] Railroad Co. v. Tennessee, 101 U. S. 337; Railroad Co. v. Alabama, 101 U. S. 832; Briscoe v. Bank, 11 Peters 257. This immunity can, nowever, be waived by appearing: Clark v. Barnard, 108 U. S. 436; s. c. 2 S. Ct. 878.

[65] De Saussure v. Gaillard, 127 U. S. 216; s. c. 8 S. Ct. 1053. But under those conditions the rights and liabilities of the state must be determined just as those of a private person: Bowen v. State, 108 N. Y. 166; s. c. 15 N. E. 56; Green v. State, 73 Cal. 29; s. c. 11 Pac. 602; 14 Pac. 610. A suit nominally against an officer, but really against a state, to enforce performance of its obligation in its political capacity, will not lie: In re Ayers, 123 U. S. 443; s. c. 8 S. Ct. 443; Hagood v. Southern, 117 U. S. 52; s. c. 6 S. Ct. 608; Louisiana v. Jumel, 107 U. S. 711; s. c. 2 S. Ct. 128. But if an officer, claiming to act as such, invade private right under color of constitutional laws, it is otherwise: Poindexter v. Greenhow, 114 U. S. 270; s. c. 5 S. Ct. 903, 962; Cunningham v. Macon &c. R. Co., 109 U. S. 446; s. c. 3 S. Ct. 292, 609; United States v. Lee, 106 U. S. 196; s. c. 1 S. Ct. 240.

[66] Trustees &c. v. Mecox Bay &c. Co., 116 N. Y. 1; s. c. 22 N. E. 387.

general, "for the well government thereof." But the cases show conclusively that alterations have been repeatedly made by act of legislature in the privileges and charters of these towns, just as if originally created by the legislature.[67]

§ 15. The development of the municipal corporation—(a) In general.—It is of course unnecessary and impossible within the limits of a legal text-book, designed for the use of practicing lawyers, to make any effort towards giving any but the barest outline of the interesting history of the development of municipalities. It is believed, however, that a brief sketch of the course of that development will prepare the mind of the reader for a more intelligent appreciation of the laws now governing the corporations of which this volume is to treat. There have been, of course, since mankind first emerged from barbarism, gatherings and centers of population. These rude and formless bodies gradually obtained a higher degree of compactness and organization, until even in very remote antiquity there seem to have been cities of great wealth and splendor, which could only have been maintained by a system of municipal government by no means contemptible, although in every respect repugnant to modern theories. The earliest myths and legends that are known to us seem to recognize the existence of towns and cities; and the explorations and excavations of modern times, revealing the ruins and relics of civilizations wholly vanished, show that men have gathered together for purposes of mutual protection from the earliest times. The storied splendors of the prehistoric cities of Egypt and India, of Central Asia, of Mexico, of Central and South America, have been shown to be not wholly mythical; while in our own country the mound-builders and the cliff-dwellers, mysterious peoples who have left no trace on the pages of history, seem also to have had their towns and villages. From the faint traces of knowledge that remain to us of these prehistoric cities, we can gather little or nothing of their organization. The cities of Egypt and of the East in general seem to have been the seat of great wealth and splendor, where the government was in the hands of a small class, who ruled the masses by the forces of superstition and military power, and where no municipal government in its modern sense existed. As each nation worked out its development and rose in the scale of civilization, a process of evolution changed the unformed village or country settlement into a body

[67] Trustees &c. v. Strong, 60 N. Y. 57; Hand v. Newton, 92 N. Y. 88; Robins v. Ackerly, 91 N. Y. 98; People v. New York &c. R. Co., 84 N. Y. 565; Trustees &c. v. Kirk, 68 N. Y. 459; Rogers v. Jones, 1 Wend. (N. Y.) 237; Atkinson v. Bowman, 42 Hun (N. Y.) 404.

more highly organized, more capable of action as a unit,—in a word, brought it nearer to the idea of the modern municipal corporation. This process, of course, has varied radically in the case of different nations, but its general trend and effect have been to convert an unorganized into an organized body; as the formless mass of protoplasm, helpless and unorganized, is developed, according to the theories of the school of modern evolution, into the highly organized and efficient forms of life to be found in the higher grades of the animal kingdom.[68]

§ 16. **(b) Greece and Rome.**—In the typical Grecian civilization the city was the state. In the earlier stages of Hellenic development, before the corrupting influence of the Macedonians and the Romans was felt, each state, with few exceptions, consisted of a city with a surrounding strip of farm land, cultivated by the dwellers in the city. These cities were governed in general by the whole body of free citizens, who met in the agora and discussed and voted on questions of domestic and foreign policy. This form of government is closely akin in many respects to the present government of the New England towns, to which reference has been made, with the important exception that in the Hellenic cities the voters were only the free inhabitants of the city, while the slaves, who generally constituted the large majority of the population of the city, performed the manual labor, were the hewers of wood and drawers of water; so that the free citizens had an abundant leisure to engage in the practical government of their city. It is to be noted that this system, in spite of the differences, produced the same virile and public-spirited government that exists to-day in the New England towns. With the decadence of the Hellenic civilization before the power of Rome and of Macedon, this democratic form of government was superseded by a stifling despotism, and the formerly autonomous cities and states became mere tributaries and puppets in the hands of foreign powers.[69] The history of Rome is the history of the greatest municipal corporation the world has seen. Taking its origin in the city by the Tiber, the Roman republic was but a development and an extension of that city, preserving in many respects the essentially municipal features of the parent government. The bestowal of Roman citizenship upon the inhabitants of a conquered and assimilated city made those inhabitants members of the great municipal corporation of which Rome was the head. The cities subdued under the Roman dominion were accorded various

[68] See "Hist. of Munic. Corp. and Boroughs," 13 Law Mag. 401.

[69] See Heeren Polit. Hist. of Greece (edit. Oxford, 1834); Schomann Dissertation on the Assemblies of the Athenians, 346; Grote Hist. of Greece, vol. 2; 1 Kent Com. 268.

degrees of liberty, the municipal towns having the full privilege of Roman citizenship, while the prefectures and colonies enjoyed a lesser freedom. The Roman republic, and the empire erected upon its foundations, were both remarkable for the great power and influence of the municipalities, in which were centered all of the wealth and culture of the period—the country villas of the rich being only summer houses, for the most part, and not permanent residences. The great city of Rome itself was on the whole well governed. The plunder of the world had given its citizens unbounded resources to adorn and beautify the imperial city. Its great aqueducts and sewers, its immense public baths and public buildings, its arches and its monuments, were worthy of its power and its greatness. Its citizens had nominally great powers of local self-government; but these powers seem to have been for the most part frustrated and evaded, first by the wealthy patricians with their trains of clients, and afterwards by the successful generals and statesmen, who were able by the prestige and power gained by successes abroad to determine and control the policy of the government of the city. Under the empire the autonomy of the city became an empty name. The servile maxim of the Roman law, "That which has pleased the prince has the force of law," shows the spirit of the municipal as well as of the national government. The city was at the mercy of the emperors, who were in turn controlled largely by the insolent soldiery of the Praetorian Guard. The Roman populace was lapped into indolence and degradation by public supplies of food, and were amused by the great public spectacles furnished at the expense of the empire. The general decadence and corruption of the times rendered the great government an easy prey to the fierce and hardy barbarians who assailed it from every side.[70]

§ 17. (c) **Italy and France—The mediaeval cities.**—In the anarchy that involved civilization after the fall of the Roman empire, the cities preserved what was left of knowledge, of culture and of art. In that unhappy time there seems to have been but little semblance of municipal or of other organized government. The city, like the state, was at the mercy of roving bands of plundering barbarians; and only by passive resistance and the power of wealth were they able to maintain any appearance of government. Out of this darkness Europe emerged with the rise of Christianity and the feudal system. In that system the cities played but a small part. The castle

[70] Liddell Rome, ch. 27; Lanciani Ancient Rome in the Light of Recent Discoveries; Guizot Hist. of Civ. Europe (edit. Oxford) 42; Recent Excavations of the Roman Forum, 13 Irish L. T. 346.

of the baron and not the town hall of the burgess was the unit of government. The towns, however, went on their way, prospering under the security afforded by the military protection of king and baron, for which the towns paid by tax and largess. By degrees this brought greater rights of self-government, until the great cities of Italy and of the Hanseatic league acquired a complete independence and became sovereign states. In Italy the great cities of Venice, Florence, Pisa and Genoa, by the power of wealth and intellect, became great powers in Europe. The representative system begins to appear in the government of these cities, but their rulers were for the most part the commercial aristocracy. Like all plutocracies, the period of their freedom was short; and torn by internal strife, and betrayed by their own citizens, they soon became subservient to foreign powers. In France the towns early obtained a high degree of independence. They bought or forced from the king or the feudal barons charters conferring privileges and immunities, and so became true municipal corporations. Their government was democratic, every citizen, under certain restrictions, voting on questions of public policy. As the feudal system declined and the power of the king became absolute, the towns gradually lost their independence, and with the rest of France became subject to the will of the king, by whose appointees they were governed.[71] A brief view of the development of the municipal corporation in England will be given in the next chapter. Our American municipal corporations are so closely connected in many respects with their English prototypes that a more extended consideration than has been given in the case of other countries will be necessary.

§ 18. **Conclusion.**—The lesson that is taught from a view of the course of development of the municipal corporation seems to be that good government is only to be secured by the active co-operation of good citizens in the government of the municipality. A city governed by an aristocracy, whether of birth or of wealth, though it may be splendidly adorned with all that wealth and taste can afford, will still lack the virility and independence that can only be secured by the active interest of the governed in the government. It will contain the seeds of decay, that will ultimately cause the decadence of civic spirit and the consequent degradation of its citizens. On the other hand, where the upper classes, absorbed in the pursuit of wealth and of pleasure, scornfully neglect the details of the government of the municipality, the ignorant and the vicious, controlled by unscrupulous

[71] See Hallam Middle Ages, ch. 11, part 2; Guizot Hist. of Civ. in France, § 19; Adam Smith Wealth of Nations, book 6, ch. 111.

and self-seeking demagogues, will infallibly plunge the municipal government into extravagance and corruption. It is to the criminal indifference of the educated classes that is due the great scandals of maladministration in the populous cities of our country. The remedy for the evil is obvious and has been pointed out time and again. The property-owning and tax-paying classes, who suffer most, from a material point of view, through the corruption of municipal administration, have the remedy in their own hands if they choose to exercise it. By discarding political prejudices, and by taking the active and intelligent interest in the administration of their public property that they manifest in the conduct of their private affairs, a clean and economical municipal administration can be secured. When the citizens of our great cities recognize the fact that the administration of city affairs is a matter of business and not of politics, and that it is to the advantage of all classes that the conduct of municipal affairs should be along the same lines of honesty and of common sense on which business men manage their private enterprises, the day of reform in municipal administration will be at hand. These truths are trite, but they are disregarded, and until they are generally acknowledged and put into practice, no permanent reform can be expected. They have been acted upon in the government of some cities,—notably Glasgow and Berlin, which afford excellent examples of a city government managed as a business and not as a political enterprise. In our own country the government of the great cities is almost entirely in the hands of professional politicians, and while their shrewdness has generally kept them from plunging into the excesses of dishonesty and crime that characterized the rule of Tweed in New York city, the whole system of government is maintained on false and vicious principles, which make the offices of the city government the reward for political influence instead of capacity and honesty, and which pile upon the shoulders of the taxpayer a heavy burden for an indifferent municipal government.[72] It is to be hoped

[72] For intelligent discussions of the interesting subject of municipal reform the reader is referred to Mr. J. A. Roebuck's essay on "The Reform of Municipal Corporations," 30 Westminster Review 48; to "Considerations on Municipal Government," 95 Fraser's Mag. 34; and to an intelligent discussion of the subject of "Municipal Government" by Mr. Dorman B. Eaton in 5 American Journal Soc. Sci. 1. The municipal government of New York city is fully analyzed in an essay by Mr. John Franklin Jameson on "The Origin and Development of the Municipal Government of New York City," in 8 Mag. of Am. Hist. 598; and the same subject is treated in an article on "Municipal Reform in New York and the Cumulative Vote," in 8 L. Mag. & Rev. (N. S.) 206. An entertaining and instructive account of the great Tweed con-

that the general adoption of what is generally known as civil service reform, and an honest and faithful effort to carry out its principles, will be highly beneficial in redeeming municipal governments from the odium cast upon them. The existing laws we have upon this subject are more or less defective, and, in some cases, have been found not in harmony with established legal principles and constitutional restrictions, as will be seen later on, yet on the whole their general effect has been salutary.

spiracy will be found in a series of articles by Mr. C. F. Wingate on "The Tweed Ring," to be found in 119 N. A. Rev. 359; 120 N. A. Rev. 119; 121 N. A. Rev. 113; and 123 N. A. Rev. 362; and in an essay by Mr. Samuel J. Tilden on "Municipal Corruption—The New York Ring," 2 L. Mag. & Rev. (N. S.) 225.

CHAPTER II.

OF THE CREATION OF THE CORPORATION.

SECTION

19. The Teutonic town.
20. The old English town.
21. The same subject continued.
22. Guilds.
23. The English boroughs.
24. The same subject continued.
25. Creation of modern English municipal corporations.
26. Municipal corporations created by charter from the crown.
27. Municipal corporations created by act of parliament.
28. Municipal corporations at common law and by prescription in England.
29. Municipal corporation by implication in England.
30. The Municipal Corporations Reform Act of 1835.
31. The Municipal Corporations Act of 1882.
32. The American town—Local self-government.
33. The power to create municipal corporations in the United States—Where vested—(a) In the state.
34. (b) In the federal government.
35. Municipal corporations created by the federal government—(a) Territories.
36. (b) The District of Columbia.
37. Municipal corporations by prescription in the United States.
38. The same subject continued—Instances of incorporation by prescription in the United States.
39. Municipal corporations by implication in the United States.

SECTION

40. The same subject continued.
41. Creation of municipal corporations in the United States—(a) In general.
42. (b) By special charter.
43. (c) By general municipal incorporating acts.
44. Constitutional limitations of legislative power to create municipal corporations.
45. Construction of such constitutional limitations—(a) Corporations "for municipal purposes" and "bodies politic or corporate."
46. (b) "Corporate powers."
47. Miscellaneous instances of such constitutional limitations.
48. Incorporation by courts.
49. The same subject continued.
50. Classes of cities under general incorporating acts.
51. The corporate limits—Territory of the corporation.
52. Acceptance of charters by corporators not necessary.
53. The same subject continued.
54. Substantial compliance with incorporating acts necessary.
55. Instances of irregularities in incorporation.
56. Notice of incorporation.
57. Validity of incorporation—How tested.
58. The same subject continued.
59. Existence not questioned collaterally.
60. The charter of a municipal corporation is a law.

SECTION
61. The American township.
62. Local self-government a delegation of legislative power.
63. The same subject continued.
64. Corporations de facto.
65. Effect of incorporation.

§ 19. **The Teutonic town.**—The germ from which the great cities of the Anglo-Saxon peoples have developed is to be found in what a modern English historian calls the "farmer commonwealths" of the primitive Teutons on the continent of Europe. In Sleswick, in the fifth century, we find the first historical record of Englishmen known as such. The same historian to whom we have referred gives a graphic and interesting description of the government of these early forefathers of our nations. "The blood-bond gave both its military and social form to old English society. Kinsmen fought side by side in the hour of battle, and the feelings of honor and discipline which held the host together were drawn from the common duty of every man in each little group of warriors to his house. And as they fought side by side on the field, so they dwelled side by side on the soil. Harling abode by Harling and Billing by Billing; and each 'wick' or 'ham' or 'stead' or 'tun' took its name from the kinsmen who dwelt together in it. The home or 'ham' of the Billings would be 'Billingham,' and the 'tun' or township of the Harlings would be Harlington. But in such settlements the tie of blood was widened into the larger tie of land. Land with the German race seems at a very early time to have become the accompaniment of full freedom. The freeman was strictly the freeholder, and the exercise of his full rights as a free member of the community to which he belonged was inseparable from the possession of his 'holding.' The landless man ceased for all practical purposes to be free, although he was no man's slave. In the very earliest glimpse we get of the German race we see them a race of landholders and land-tillers. Tacitus, the first Roman who sought to know these destined conquerors of Rome, describes them as pasturing on the forest glades around their villages and ploughing their village fields. A feature which at once struck him as parting them from the civilized world, to which he himself belonged, was their hatred of cities, and their love, even within their little settlements, of a jealous independence. 'They live apart,' he says, 'each by himself, as woodside, plain or fresh spring attracts him.' And as each dweller within the settlement was jealous of his own isolation and independence among his fellow settlers, so each settlement was jealous of its independence among its fellow settlements. Of the character of their life in this early world, however, we know little save what may be gathered from the indications of a later time. Each little farmer commonwealth was girt in by its own border or 'mark,' a belt of forest

or waste or fen, which parted it from its fellow villages, a ring of common ground which none of its settlers might take for his own, but which sometimes served as a death ground where criminals met their doom, and was held to be the special dwelling-place of the nixie and the will-of-the-wisp. If a stranger came through this wood or over this waste, custom bade him blow his horn as he came, for if he stole through secretly he was taken for a foe, and any man might lawfully slay him. Inside this boundary the 'township,' as the village was then called, from the 'tun' or rough fence and trench that served as its simple fortification, formed a ready-made fortress in war, while in peace its intrenchments were serviceable in the feuds of village with village or house with house. Within the village we find from the first a marked social difference between two orders of its indwellers. The bulk of its homesteads were those of its freemen or 'ceorls,' but amongst these were the larger homes of 'eorls,' or men distinguished among their fellows by noble blood, who were held in an hereditary reverence, and from whom the leaders of the village were chosen in war time, or rulers in time of peace. But the choice was a purely voluntary one, and the man of noble blood enjoyed no legal privilege among his fellows. The holdings of the freemen clustered around a moot hill or sacred tree where the community met from time to time to order its own industry and to frame its own laws. Here plough-land and meadow-land were shared in due lot among the villagers, and field and homestead passed from man to man. Here strife of farmer with farmer was settled according to the 'customs' of the township, as its 'elder men' stated them, and the wrong-doer was judged and his fine assessed by the kinsfolk; and here men were chosen to follow headman or 'ealderman' to hundred court or war. It is with a reverence such as is stirred by the sight of the head-waters of some mighty river that one looks back to these tiny moots where the men of the village met to order the village life and the village industry, as their descendants, the men of a later England, meet in parliament at Westminster to frame laws and do justice for the great empire that has sprung from this little body of farmer commonwealths in Sleswick."[1]

§ 20. **The old English town.**—The same form of government described in the preceding section was carried by the Angles, the Saxons, and the Jutes to Britain. "War was no sooner over than the warrior settled down into a farmer, and the home of the peasant churl rose beside the heap of goblin-haunted stones that marked the site of the villa he had burnt. Little knots of kinsfolk drew together in 'tun'

[1] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), § 1, p. 3.

or 'ham' beside the Thames and the Trent as they had settled beside the Elbe or the Weser, not as kinsfolk only, but as dwellers in the same plot, knit together by their common holding within the same bounds. Each little village commonwealth lived the same life in Britain as its farmers had lived at home. Each had its moot hill or sacred tree as a center; its 'mark' as a border; each judged by witness of the kinsfolk, and made laws in the assembly of its freedmen, and chose the leaders for its governance, and the men who were to follow headman or ealderman to hundred court or war."[2] The necessities of war and conquest, however, modified this primitive and democratic form of government. The temporary war leader of the earlier times became a permanent king; and a military nobility of "thegns" sprang up around him. The nobility gradually superseded the ealderman of the primitive society. Under the king and the "thegns" the powers of the townsmen became less. Local self-government was no longer as absolute as it had been. The beginnings of a feudal system were to be seen. With the conquest and the attendant increase in power of the military classes, and the consequent temporary subjugation of the masses, the towns continued to lose the free and independent system of self-government so characteristic of the Teutonic townships. The feudal system was for the time firmly established in England, and in that system, as has been said, towns played but a small part. Thus, the municipal system of England became affected by Norman principles of government, which were based on the Roman law. This fact explains why the commons had so little voice in the creation of corporations in England for so long; for the Norman nobles and clergy controlled all the departments of state, and William the Conqueror and his sons were thorough Normans in their predispositions and prejudices. The Norman cities gained their charters slowly. Rouen and Falaise are said to have been the first incorporated towns in that duchy, their privileges being acquired by grant in 1207. The characteristic of the earlier English charters, being in fact concessions from a military superior to his subjects, was that they conferred the right to protection of person and property, rather than any right of self-government.[3]

§ 21. **The same subject continued.**—That right the people were not yet disposed to demand. They were not yet in a position to defend themselves, and security of life and property seemed a great enough

[2] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), § 2, p. 15.

[3] History of Municipal Corporations and Boroughs, 13 L. Mag. 401. See also, as to Scotch municipalities, "Municipal Corporations in Scotland," 24 Westm. Rev. 156.

boon to acquire. But as the nation became settled, and communities gained wealth by trade, they were encouraged to beg, buy or demand greater privileges,—more voice in their own private local affairs; so, little by little, local self-government again became the feature of municipalities, after so long an abeyance that it is often deemed to have had its origin at this point in history.[4] And in the great struggles for liberty and law by which the English people wrested from king and priest their birth-right of freedom, the towns were always arrayed against arbitrary power. "In the silent growth and elevation of the English people the boroughs led the way; unnoticed and despised by prelate and noble, they had alone preserved or won back again the full tradition of Teutonic liberty. The rights of self-government, of free speech in free meeting, of equal justice by one's equals, were brought safely across the ages of tyranny by the burghers and shop-keepers of the towns. In the quiet, quaintly-named streets, in town-mead and market place, in the lord's mill beside the stream, in the bell that swung out its summons to the crowded borough-mote, in merchant-gild, and church-gild and craft-gild, lay the life of Englishmen who were doing more than knight and baron to make England what she is, the life of their home and their trade, of their sturdy battle with oppression, their steady, ceaseless struggle for rights

[4] We quote here the description of the rise of municipalities given in Angell and Ames' Treatise on the Law of Private Corporations, in the introduction: "§ 21. In the reign of Henry the First of England, who was a contemporary of Louis le Gros, the inhabitants of London had begun to form their tolls and duties, and they obtained a royal charter for that purpose. The example of London was soon followed by the other trading towns, and from this time forward the existence of the municipal corporations called 'boroughs' became more and more conspicuous. The arrangement just mentioned in relation to tolls and duties seems to have suggested the idea of a borough, considered as a corporation. Some of the principal inhabitants of a town undertook to pay the yearly rent which was due to the superior, and in consideration of which they were permitted to levy the old duties, and become responsible for the funds committed to their care. As managers of the community, therefore, they were bound to fulfill its obligations to the superior, and by a very natural extension of the same principle, it was finally understood that they might be prosecuted for all its debts. The society was thus viewed in the light of body politic, or fictitious person, capable of legal acts and executing every kind of transaction by means of trustees. This alteration in the state of English towns was accompanied by many other improvements; they were placed in a condition that enabled them to dispense with the protection of their superior; and took upon themselves to provide a defense against foreign invaders, and to secure their internal tranquillity. In this manner they ultimately became completely invested with the government of the place."

and freedom. It is difficult to trace the steps by which borough after borough won its freedom. The bulk of them were situated in the royal demesne, and, like other tenants, their customary rents were collected and justice administered by a royal officer. Amongst our towns London stood chief, and the charter which Henry granted it became the model for the rest. The king yielded the citizens the right of justice; every townsman could claim to be tried by his fellow-townsmen in the town court or hustings, whose sessions took place every week. They were subject only to the old English trial by oath, and exempt from the trial by battle which the Normans had introduced. Their trade was protected from toll or exaction over the length and breadth of the land. The king, however, still nominated in London, as elsewhere, the portreeve or magistrate of the town, nor were the citizens as yet united together in a commune or corporation; but an imperfect civic organization existed in the 'wards' or quarters of the town, each governed by its own alderman, and in the 'gilds' or voluntary associations of merchants or traders, which insured order and mutual protection for their members. Loose, too, as these bonds may seem, they were drawn firmly together by the older English traditions of freedom which the towns preserved. In London, for instance, the burgesses gathered in town-mote when the bell swung out from St. Paul's, to deliberate freely on their own affairs under the presidency of their aldermen. Here, too, they mustered in arms if danger threatened the city, and delivered the city banner to their captain, the Norman baron, Fitz-Walter, to lead them against the enemy. Few boroughs had as yet attained to power such as this, but charter after charter during Henry's reign raised the townsmen of boroughs from mere traders, wholly at the mercy of their lord, into customary tenants, who had purchased their freedom by a fixed rent, regulated their own trade, and enjoyed exemption from all but their own justice."[5]

§ 22. **Guilds.**—In England, as indicated in the preceding section, the increase and encouragement of commerce was at the basis of municipal rights. For, long before municipalities acquired their chartered privileges, associations of tradesmen secured from the crown, for a consideration, franchises and privileges in the line of their particular business. These guilds were little centers of trade; around them towns grew up; the members of the guild being electors or franchise-holders in the towns. To these towns, as their trade-homes, they became attached. The town and guild became more and more identified, and eventually the privileges they sought were for the towns

[5] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), § 6, p. 93.

themselves,—and these privileges were given by the king in charters. The privileges conferred in these charters were sufficient to build up a class rivaling in power the great lords and barons. Glover traces the successive steps of the English municipality in the introduction to his work on Municipal Corporations; saying: "Respecting the early constitution of municipal corporations in England and Wales, it is certain that many of their institutions were established in practice long before they were settled by law. In some places, as at Newcastle-upon-Tyne, Carlisle and Scarborough, the forms of the municipal government were defined by an express composition between the magistracy and the people." The same writer continues: "It is probable that the powers of government in all ordinary cases were exercised by the superior magistracy, but that in extraordinary emergencies the whole body of burgesses was called upon to sanction the measures which interested the community. The difficulty of conducting business in such an assembly seems to have suggested the expedient of appointing a species of committee, which acted in conjunction with the burgesses, and which was dissolved when the business was concluded." These boroughs, thus organized, had subsequently representation in parliament. Later, as they acquired influence in parliament, they were able to modify the character of its laws. New principles took root: the people were having a voice in the making of the laws that were to affect them; so that equality and public good were increasingly prevailing considerations in legislation.[6]

§ 23. **The English boroughs.**—The development of the English boroughs under the influence of civic spirit made formidable by the power of commerce and wealth is clearly traced by Mr. Green in his admirable History of the English People. First came the "frith-guild" or peace-club, a voluntary association of neighboring landowners for the purposes of order and self-defense. This rude organization is but a step removed from the primitive Teutonic town. In the beginning these early English boroughs were but gatherings of farmers. The first Dooms of London provide especially for the recovery of cattle belonging to the citizens. But with the growth of commerce and the security of peace, which enabled each peasant farmer to dwell apart on his own field, the town and the country were more sharply distinguished. The frith-guilds became merchant-

[6] Glover, cited above, treats fully of the history and growth of municipalities in England, Wales, Scotland and Ireland. Judge Dillon, in his introductory, historical view (Dillon Munic. Corp., ch. 1), traces municipal institutions to the Municipal Corporations Act (5 & 6 Will. IV). See also, Hallam Middle Ages, vol. 3, ch. 8; 1 Stephen English Const., ch. 3, p. 62.

guilds. The active members of these guilds were the landed burghers —land-owners as well as merchants. Around them gathered a mass of new settlers, "composed of escaped serfs, of traders without landed holdings, of families who had lost their original lot in the borough, and generally of the artisans and the poor, who had no part in the actual life of the town." The burgher class, secure in their wealth and their land, ground the faces of the landless artisans, who for protection formed "craft-guilds" or associations of artisans, the prototypes of the labor unions of modern times. These associations of workingmen gained charters from the king, and thus obtained a legal standing in the civic government. The struggle between these "craft-guilds" and the old and powerful "merchant-guilds" was long and bitter. Little by little the monopoly of power over trade and the municipal government, which the merchant-guilds had gained, was won from them by the craft-guilds, which in time obtained an almost absolute control of trade, and stand with the merchant-guilds in the government of the municipality.[7] As these English boroughs, towns and cities developed, charters were obtained from time to time from the crown. In the beginning they were not incorporated and could not be called bodies politic; nor were they represented in parliament. The charter of London was granted by Henry I, during the early years of the twelfth century, and was secured afterwards by express provision of Magna Charta; in fact, all of the privileges granted by the borough charters were of a local character in every respect. Judge Dillon in the portion of his work just cited gives an excellent historical sketch of the English boroughs, to which the reader is referred. The material for this section is largely taken from that sketch. During the reign of John, indeed, the principal towns and boroughs received charters and the power of local self-government.[8] But it was not until Edward I that the right of electing representatives in parliament was formally accorded to the boroughs,[9] although as early as A. D. 1265, Earl Simon of Montford summoned two citizens from each borough to sit in parliament. Until the time of Edward I, however, these burgess-members attended irregularly and had but a slight influence. That king, driven by need of money to carry on the wars

[7] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), ch. 4, § 4, pp. 193, 201. See also, Brentano's Essay, prefixed to "Ordinances of English Guilds."

[8] 1 Dillon Munic. Corp., § 8, quoting 1 Stephen English Const., ch. 3, p. 62: "The principal liberties granted in the early charters are exclusive jurisdictions, a merchant-guild, the appointment of the various officers for the administration of justice, fairs and markets, with freedom from all tolls."

[9] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), ch. 4, § 2, pp. 177–179.

of his reign, summoned two burgesses from "every city, borough and leading town." These burgesses were at first the active supporters of the king. He used them to break the power of the great barons of the realm; and the burgesses in turn sought the protection of the king against the oppression of the nobility. But with the advance of the autocratic power of the king under the Tudors and the Stuarts, these burgesses stood out as leaders in the fight for the liberties of the people. Under Charles II the municipal corporations of England were the especial objects of royal displeasure. The city of London and many other municipalities were deprived of their charters by process of quo warranto. But under William and Mary the charters of these cities were restored.

§ 24. **The same subject continued.**—Many of these boroughs, however, early lost the independence which had characterized their early government. "The borough franchise was suffering from the general tendency to restriction and privilege which in the bulk of towns was soon to reduce it to a mere mockery. Up to this time (the fifteenth century) all freemen settling in a borough and paying their dues to it became, by the mere settlement, its burgesses; but from the reign of Henry the Sixth this largeness of borough life was roughly curtailed. The trade companies, which vindicated civic freedom from the tyranny of the older merchant guilds, themselves tended to become a narrow and exclusive oligarchy. Most of the boroughs had by this time acquired civic property; and it was with the aim of securing their own enjoyment of this, against any share of it by 'strangers,' that the existing burgesses for the most part procured charters of incorporation from the crown, which turned them into a close body, and excluded from their number all who were not burgesses by birth, or who failed henceforth to purchase their right of entrance by a long apprenticeship. In addition to this narrowing of the burgess-body, the internal government of the boroughs had almost universally passed, since the failure of the communal movement in the thirteenth century, from the free gathering of the citizens in borough-mote into the hands of common councils, either self-elected or elected by the wealthier burgesses; and it was to these councils, or to a yet more restricted number of 'select men' belonging to them, that clauses in the new charters generally confined the right of choosing their representatives in parliament. It was with this restriction that the long process of degradation began which ended in reducing the representation of our boroughs to a mere mockery."[10] Thus in the course of

[10] Green Short Hist. Eng. People (Harper & Bros., ed. 1889), ch. 6, § 1, p. 272.

time the system of borough representation in England became rotten with abuses. The famous Reform Act of 1832 abolished in great measure the abuses of the system, by placing the government of the boroughs in the hands of a larger electorate, and by doing away with many of the "pocket boroughs" which had dwindled into petty villages, owned by neighboring landlords, for whose personal ends the burgesses were elected. In 1835 the Municipal Corporations Reform Act[11] restored to the members of municipal corporations the rights of local self-government, of which they had been deprived since the fourteenth century. The Municipal Corporations Act of 1882 consolidated and codified all the previous legislation on the subject of municipal corporations in England.[12]

§ 25. Creation of modern English municipal corporations.—The modern English municipal corporation is created either by charter granted by the king under the general provisions of the Municipal Corporations Act of 1882 or by act of parliament. The general statute provides that if, on the petition to the queen of the inhabitant householders of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, her majesty, by the advice of her privy council, thinks fit by charter to create such town, towns or district, or any part thereof specified in the charter with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for her majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporations Act.[13] The corporation created by charter from the crown under the general statute possesses in general

[11] 5 & 6 Will. IV, ch. 76.

[12] For a full treatment of the interesting subject outlined in the preceding sections, see Dillon Munic. Corp., in loco; Green Short Hist. Eng. People (Harper & Bros., ed. 1889), pp. 92–95, 129, 156, 177, 194–201, 272, 402, 663, 843; Norton Comm. on Hist. Const. and Chartered Franchises of the City of London; 3 Hallam Middle Ages, ch. 8, part 1; 1 Stephen Eng. Const., ch. 3; Hearn Gov. of Eng., ch. 15; Willcock Munic. Corp. 513; Glover Corp., ch. 38; Crabbe Hist. of Eng. Law, ch. 2; 1 Bl. Com. 114; 2 Kent Com. 278; Vaughan Revol. in Eng. Hist., book 2, ch. 8; Frothingham Rise of the Republic 14.

[13] Municipal Corporations Act of 1882, § 210. The crown has always possessed, says an English writer, the power of creating corporations and conferring franchises (see 1 Kyd Corp. 61); but where privileges and powers are to be conferred which are not recognized by the common or statute law, an act of parliament is necessary. This act (the Municipal Corporations Act of 1882), though even without the saving provision contained in section

all the common-law powers and qualities of a corporation, except as limited by express provision of the charter;[14] while parliament has power to confer upon the corporations created by its act special and unusual powers not incident to common-law corporations.[15]

§ 26. **Municipal corporations created by charter from the crown.**—This class of corporations, as indicated in the preceding section, possesses the powers and attributes of common-law corporations, and no other. These powers and attributes are of course subject to the restrictions imposed by the charter. It is a fundamental principle that the crown can impose no charter upon a community without the acceptance and consent of the people of the community. "And as acceptance was necessary to make the king's charter operative, it will

259 it would not at all abridge the common-law prerogative of the crown, nevertheless prevents its granting charters of incorporation with the powers conferred by this act, save with the advice of the privy council and on petition by "the inhabitant householders." Rawlinson Municipal Corporation Acts (8th ed. by Thomas Geary, 1884) 293, note. The saving provision mentioned prescribes that nothing in this act shall prejudicially affect her majesty's royal prerogative, and the enabling provisions of this act shall be deemed to be in addition to and not in derogation of the powers exercisable by her majesty by virtue of her royal prerogative: Municipal Corporations Act of 1882, § 259. Of this provision the same writer from whom we have quoted says: "This seems merely re-affirming the old doctrine that the crown is not affected by any statute unless expressly named therein:" Rawlinson Municipal Corporation Acts (8th ed. by Thomas Geary, 1884) 339, note. See on this topic generally, "Municipal Corporations—How Organized and Dissolved," a note by H. B. Johnson, 18 Am. L. Reg. (N. S.) 43. See on the subject of the common-law prerogative of the crown to grant charters, Rutter v. Chapman (in error, in the exchequer chamber), 8 M. & W. 1; Reg. v. Mayor &c., 11 L. T. (N. S.) 417; s. c. 13 W. R. 90. It is further provided that every petition for a charter under this act shall be referred to a committee of the lords of her majesty's privy council; and that at least one month before the petition is taken into consideration by the committee, notice thereof and of time at which it will be so taken into consideration shall be published in the London Gazette and otherwise as the committee direct, for the purpose of making it known to all persons interested: Municipal Corporations Act of 1882, § 211.

[14] See, for American cases on the powers of corporations created by charter from the crown, People v. Bennett, 29 Mich. 451; s. c. 18 Am. R. 107; President &c. v. Society &c., 24 N. J. L. 385. See also, 1 Kyd Corp. 61; Willcock Munic. Corp. 30; Angell & Ames Corp., § 69.

[15] Rawlinson Municipal Corporation Acts (8th ed. by Thomas Geary, 1884) 293, note (d); Willcock Munic. Corp. 63, 64; 1 Kyd Corp. 61; 1 Dillon Munic. Corp. 33; Glover Munic. Corp. 24.

be found that the municipal charters which he gave were all given to existing communities, having a recognized and organized existence, and in the habit of acting as one body through elections or agencies and officers. So far as we can judge from history, they were to all intents and purposes already as complete corporations for all practical purposes as are simpler municipal bodies, and accustomed to what was practically corporate action, and known as quasi-corporations. But even these could get nothing from the royal grant but liberties or franchises. Any coercive or exclusive power, which by the principles of the common law could not be granted by the king's charter, could only be given by act of parliament."[16] A royal charter is a formal authorization, documentary in form, under the great seal, to the persons named therein, to incorporate themselves in a certain place and for certain purposes. It is addressed to all the subjects of the king. The king's charter is wholly inoperative until the persons named therein as incorporators accept it. Their assent is essential to give life to the charter, and this assent must be to the very charter proffered them. In case of partial acceptance the charter avails nothing, unless the modification be approved by the king. In the case of a new corporation, however, a partial acceptance is considered an acceptance of the whole charter. It is said to have been a settled principle at common law that the king had a prerogative right to grant charters —municipal as well as private. But this only meant that he had a prerogative to confer privileges. He had no power to impose political obligations on any person or community, unless they were in the form of conditions, nor could he compel the acceptance of any charter.[17] After the charter has been accepted, the crown can not withdraw the charter and thereby destroy the life of the corporation, its creature, without the consent of the members of the corporation.[18]

§ 27. Municipal corporations created by act of parliament.— In contrasting parliamentary with royal incorporations, it must be borne in mind that the charters granted by the crown were given to existing communities having a recognized organized existence. Inasmuch as their assent was necessary to render the charter operative, in no other way could it have been signified except by a body acting through agencies or officers. The powers of parliament regarding

[16] 1 Kyd Corp. 61. See President &c. v. Society &c., 24 N. J. L. 385; Eastman v. Meredith, 36 N. H. 284; People v. Bennett, 29 Mich. 451; Am. & Eng. Encyc. of Law, tit. Municipal Corporations, p. 956.

[17] Willcock Munic. Corp. 30; President &c. v. Society &c., 24 N. J. L. 385.

[18] 1 Dillon Munic. Corp., §§ 33, 34; Kyd Corp. 61 et seq.; Willcock Munic. Corp. 30; Angell & Ames Corp., § 69.

the institution of municipal corporations are plenary; for, as we have seen, there is only one party, the public, concerned in the creation of a municipal corporation, and the persons incorporated have no contractual rights under their charter. The charter of a corporation created by parliament is the act of parliament. No assent is necessary to render an act of parliament operative. Not only that, but without assent the incorporated individuals may be deprived of the franchises originally given. Moreover, the powers granted may even be contrary to the usual rules of law; only, if that be so, there must be no ambiguity in terms, as such grants are not to be implied.[19] Parliament can create corporations the privileges of which can never be affected by subsequently-granted royal charters, and can at the same time control and alter any corporation instituted under permission from the crown. While it has been said that no assent is prerequisite in the case of parliamentary corporations, it must be stated in qualification that an act of parliament usually contains provisions for the conditions of incorporation. The English statute for local government in "towns and populous districts"[20] provides that this local government is to be adopted by the people who are to exercise the power; for example, in a corporate borough the council adopt the provisions of the act; and in a place under commissioners the adoption would be by resolution of the commissioners. This adoption of the provisions of the act, and complying with the conditions therein prescribed, is equivalent to an assent of the persons to be incorporated.[21] Parliamentary corporations at first were usually such as were to be invested with extraordinary privileges or powers. When the ordinary powers alone were to be given the charter of the king was sufficient. If a royal charter gave too much power, it was to that extent void, and parliament could validate it by enactment. But under the Municipal Corporations Act now in force in England,[22] nearly all corporations are parliamentary in their origin. Such laws establish uniform conditions, confer uniform privileges, to all who will meet the prescribed requirements. These general statutes will now be considered.

§ 28. **Municipal corporations at common law and by prescription in England.**—Although municipal corporations in England can be created only by one of the two methods pointed out in the preceding section,—by charter from the crown or by act of parliament,—still many municipal corporations which owe their origin to neither

[19] Glover Munic. Corp. 24; Willcock Munic. Corp. 21 et seq.; 1 Dillon Munic. Corp., § 34.

[20] 21 and 22 Vict., ch. 98, § 12.

[21] Queen v. Local Government Board, L. R. 8 Q. B. 227.

[22] Act of 1882.

of these two sources are in existence in that country. These are divided into two classes, known as municipal corporations at common law and municipal corporations by prescription. As the law never presumes the continued existence of anything unlawful, a legal inception for both classes is presumed. Municipal corporations at common law are those to which several capacities have been annexed, in virtue of their political character, by the universal assent of the community, from the most remote period to which their existence can be traced. These corporations have existed, enjoying and exercising corporate rights, from time immemorial. This immemorial usage is the basis of their continuing right. The second class—corporations by prescription—are presumed to owe their origin to a charter from the crown or an act of parliament, that has been lost or destroyed. Such corporations are of course much more common in England than in the United States, although public corporations by prescription have been held to exist here.[23] Prescriptive corporations have a definite legal status. The powers and privileges they have customarily enjoyed are conceded to them—the supposition being that the customs and usages regulating them were defined and prescribed in the lost charter. These customs are not always so strictly interpreted as those under a charter of modern origin; for, as has above appeared, the earliest charters were granted in the days when the power of the king had few if any parliamentary restrictions, and hence he could confer greater privileges, and create corporations with ampler powers, than the sovereign to-day.[24]

§ 29. **Municipal corporation by implication in England.**—The municipal corporation by implication, as it is styled, does not constitute a class of municipal corporations distinct by origin from the corporations discussed in the preceding sections. Where the royal charter or act of parliament plainly intends to constitute a corporate municipal body, yet fails expressly to confer on that body any attribute or power essential to corporate existence, the law "ut res magis valeat quam pereat" implies from the intention of the charter or act such attribute or power; and the body so created is considered to be validly incorporated. Such a municipal corporation is called a municipal corporation by implication.[25] There are many instances of these corporations by implication in the early English cases. Thus a

[23] See post, §§ 37, 38, 39, 40.

[24] Co. Litt. 250a.

[25] Kyd Corp. 63; Grant Corp. 43; Case of Sutton's Hospital, 10 Co. 1, 27a; Borough of Yarmouth Case, 2 Bro. & G. 292; Conservators &c. v. Ash, 10 B. & C. 349; 1 Dillon Munic. Corp., § 42, from whose text the instances given in this section are taken.

grant of incorporation to the burgesses of Yarmouth was held by Lord Coke to be good although it failed expressly to confer incorporation upon their successors;[26] and a royal grant to the men of a district authorizing them to elect a mayor, and to plead and be impleaded by the name of the mayor and commonalty, was considered sufficient to incorporate them.[27] A grant of land by the king to the inhabitants of B, their heirs and successors, rendering rent, was held to constitute them a corporation.[28] Also a grant by the crown to the men of a certain locality that they be discharged of tolls was thought to incorporate them for that purpose at least.[29]

§ 30. **The Municipal Corporations Reform Act of 1835.**—In the reign of William IV the question of reforming the municipalities of the realm was agitated in the house of commons. An investigating committee, composed of barristers, was finally appointed, and they made a thorough tour of the kingdom. They separated into several subdivisions, and facilitated their labor by all the expedients known to the English parliamentary investigating committees. The state of facts disclosed was startling. It was, among many other things, discovered that in nearly all the municipalities the governing bodies were self-constituted and self-electing, and that these governing bodies appointed the municipal officers from their own clique or ring, thus giving unbounded opportunity for corruption and oppression. The committee reported that no uniform judicial system existed; that there was no equable and uniform fiscal policy pursued; that the magistrates were not often qualified by education or birth for the offices they held; the juries were improperly and partially impaneled; the corporations denied accountability; that responsibility could not be fastened anywhere; and that the constabulary was ill-organized, and the usual duties of a municipality wholly neglected. In short, the absence of system, the nonexistence of definitely prescribed regulations of law, was manifest everywhere throughout the two hundred and forty-six municipalities which the report of the commissioners showed to exist. The commission pointed out that the corporations existed independently of the communities in which they had been established, and that there was no identity of interest between them, and that in some cases the franchises of corporation had been bestowed not on selected individuals of the community, but sometimes on nonresident freemen. Altogether it was found that among the inhabit-

[26] Borough of Yarmouth Case, 2 Bro. & G. 292.

[27] 21 Edw. IV, 56.

[28] 2 Jac. Law, tit. Corporation, p. 94.

[29] Vin. Abr., Corp. F., p. 6; Bagott's Case, 7 Edw. IV, 29.

ants of the English municipalities generally dissatisfaction existed with their form of local government. The report closed by stating that the commissioners felt it to be their duty to represent to his majesty that the municipal corporations of England and Wales neither possessed nor deserved the confidence and respect of his majesty's subjects; and they suggested that a thorough reform be effected, in order that they might become useful and efficient instruments of local government.[30] In consequence of this report, an act was passed the same year, 1835,[31] which in its main provisions still obtains, and is at the basis of the municipal system both of England and the United States. It provided that the governing bodies and existing magistrates of every corporation should be removed that year; that town councils were to be elected triennially by the burgesses; that any one was eligible to be a burgess who had been rated three years to support the poor. It enumerated in schedules all the existing municipalities, and provided for their reincorporation under the name of the mayor, aldermen and burgesses—or citizens, as the case might be—of so-and-so, and that by such name it should "have perpetual succession, and shall be capable in law, by the council hereinafter mentioned of such borough, to do and suffer all acts which now lawfully they and their successors respectively may do and suffer by any name or title of incorporation." The act further settled the metes and bounds of the reorganized municipalities, provided for courts therein, settled the qualifications and mode of election of the city or borough officers, and organized a constabulary. It authorized the councils to make by-laws, provided for the municipal funds, abolished chartered admiralty jurisdiction, laid down various rules of procedure, and finally authorized the crown to grant charters of incorporation "upon petition" of the inhabitant householders in any municipality alluded to in the act.[32]

§ 31. **The Municipal Corporations Act of 1882.**—The preamble to this act states clearly the reasons actuating parliament in its passage. "Whereas divers bodies corporate at sundry times have been constituted in the cities, towns and boroughs of England and Wales to the intent that the same might forever be and remain well and quietly governed: And whereas, the act of the session of the fifth and sixth

[30] Municipal Corporations Rep. 49. See also, Reform of Municipal Corporations, by J. A. Roebuck, 30 Westm. Rev. 48.

[31] 5 and 6 Will. IV, ch. 76.

[32] The principal municipal corporation amendment acts were passed in 1836 and 1837, and are known as The Municipal Boundaries Act; The Municipal Funds Act; The Municipal Jurisprudence Act; The Recorders' Courts Act; The Municipal Elections Act; The Municipal Rates Act.

years of the reign of King William the Fourth, chapter seventy-six, 'to provide for the regulation of municipal corporations in England and Wales,' applies to most of those bodies constituted before the passing of that act, and to every of the bodies constituted after the passing of that act; and that act having been from time to time much altered and added to by other acts, it is expedient that all the acts aforesaid be reduced into one act with some amendments: Be it therefore enacted," etc.[33] The act is chiefly a consolidation statute, the alterations being generally merely for the purpose of accommodating its meaning to that of the previous statutes as defined by subsequent decisions.[34] The previous legislation affecting municipal corporations was expressly repealed with some qualifications and exceptions by the act.[35] Under the provisions of the act no one can be enrolled as a burgess or citizen unless he is of full age; has for twelve months occupied a house, warehouse, country house, shop or other building in the borough; has during the whole of those twelve months resided in the borough or within seven miles thereof; has been rated for and paid all poor-rates in respect to the property so occupied for those twelve months; is not an alien; has not received for twelve months any union or parochial relief or other alms; or is not disentitled under the act of parliament.[36] The council of the borough is composed of the mayor, aldermen and councilors of the

[33] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50.

[34] Rawlinson Municipal Corporation Acts (8th ed. by Thomas Geary, 1884) 1.

[35] See, for list of repealed enactments, Rawlinson Municipal Corporation Acts (8th ed. by Thomas Geary, 1884) 342–346. It is provided in the saving clauses of the act that nothing therein contained shall prejudicially affect any charter granted before the commencement of the act; or alter the boundaries of any borough or the number, apportionment or qualification of the aldermen or councilors thereof or the division thereof into wards; or the respective jurisdiction of county and borough justices; or the effect of any local act of parliament; or the effect of the Prison Acts; or the rights, knowledge, duties and liabilities of the universities of Oxford and Cambridge; or the ecclesiastical jurisdiction over cathedral precincts; or shall prejudicially affect her majesty's prerogative; or shall affect anything done or suffered before the commencement of this act under any enactment repealed by this act, or pending at its commencement; or any established jurisdiction or practice; or the terms on which money has been borrowed before the commencement of this act under any enactment repealed by this act, together with other savings and exceptions less important. And it is further provided that the repeal effected by this act shall not extend to Scotland or Ireland: Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, §§ 250–260.

[36] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 9.

borough.[37] The aldermen are elected by the council out of the number of the councilors or persons qualified to be councilors; and if a councilor is elected to and accepts the office of alderman he thereby vacates his office of councilor.[38] The councilors are elected by the burgesses. There are numerous qualifications necessary in order to be chosen councilor, chief of which is the requirement that a person must be enrolled or qualified to be enrolled as a burgess, and must be seized or possessor of property in the borough of one thousand pounds if the borough has four or more wards; and if the borough has a less number of wards, of five hundred pounds.[39] No one holding any office or place of profit in the gift of the council, except the office of mayor or sheriff, can be elected councilor; nor can a minister of the church of England or of a dissenting congregation be elected.[40] The mayor is elected by the council from among ten aldermen or councilors or persons qualified to be such.[41] It is of course impossible within the scope of this work to give any detailed outline of the general provisions of the act. The essential distinction between the system of municipal government established by the act in England, and the system most general in this country, is that in the English municipalities the entire government is practically confided to the council, generally consisting of from twelve to sixty-four members, of whom the mayor is one; while in our system the powers of government are generally divided between the mayor and the common council or board of aldermen. Both systems have their advantages; but on the whole the English plan is simpler, and affords less opportunities for evasion or shifting of responsibilities.[42]

§ 32. **The American town—Local self-government.**—As this country was founded by Englishmen and its government established on the lines of the common law of England so modified as to meet the requirements of a republic, our municipal corporations were established in accordance with the English principles of liberty. They generally possess, however, powers of local self-government far greater than those of the English towns. Thus in Pennsylvania it is provided by the constitution of that state that the general assembly shall not

[37] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 10, subdiv. 2.

[38] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 14.

[39] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 11.

[40] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 12.

[41] Municipal Corporations Act of 1882, 45 and 46 Vict., ch. 50, § 15.

[42] See Dillon Munic. Corp., § 36, citing an excellent article by Mr. Shaw on Existing Municipal Government in Great Britain, Political Science Quarterly, vol. 4, p. 97.

pass any local or special law regulating the affairs of counties, cities, townships or like bodies.[43] Thus it has been said by an eminent writer: "In contradistinction to those governments where power is concentrated in one man or in one or more bodies of men whose supervision and active control extends to all the objects of government within the territorial limits of the state, the American system is one of complete decentralization, the primary and vital idea of which is that local affairs shall be managed by local authorities and general affairs only by the central authorities."[44] These municipal corporations are peculiarly the subject of state as distinguished from federal control. They are the creatures of the state legislatures, and must remain subject to the wise control of their creators within constitutional limitations. It was said by an eminent New York justice: "When the present constitution was formed, the entire territory of the state was separated and appropriated by its civil divisions, its counties, cities and towns. These civil divisions are coeval with the government. The state has never existed a moment without them. All our thoughts and notions of civil government are inseparably associated with counties, cities and towns. They are permanent elements in the frame of government; they are institutions of the state, durable and indestructible by any power less than that which gave being to the organic law. They are, however, subject to control and regulation by the legislature. It may enlarge or circumscribe their territorial limits, increase or diminish their members, separate them into parts and annex some of the parts to others; but they must still assume the form and be known and governed only as counties, cities or towns. The state at large is and ever has

[43] City of Reading v. Savage, 120 Pa. St. 198; s. c. 13 Atl. 919; McCarthy v. Commonwealth, 110 Pa. St. 243; s. c. 2 Atl. 423.

[44] Cooley Const. Lim. 223; People v. Common Council &c., 28 Mich. 228; s. c. 15 Am. R. 204. In the famous Detroit Park Case just cited, it was held that the legislature could not compel a city to issue bonds for the purchase of land for a park against the will of the city council. In his opinion Judge Cooley says:— "It is a fundamental principle in this state, recognized and perpetuated by express provision of the constitution, that the people of every hamlet, town and city of the state are entitled to the benefits of local self-government." Caldwell v. Justices, 4 Jones Eq. (N. C.) 323. In the last cited case Ruffin, J. (whom Judge Dillon calls "one of the ablest of American common-law judges"), exhaustively discusses the inherent and hereditary right of local self-government. See also, Grogan v. San Francisco, 18 Cal. 590; People v. Batchellor, 53 N. Y. 128; People v. Mayor &c., 51 Ill. 17; s. c. 2 Am. R. 278; Barnes v. Lacon, 84 Ill. 461; Cairo &c. R. Co. v. Sparta, 77 Ill. 505. This subject will be more fully treated post, in discussing legislative control of municipal corporations.

been an aggregate of these local bodies."[45] In addition to the usual municipal corporations, such as cities, towns and villages, it has been the policy of American legislation to incorporate, at least for some purposes, many minor subdivisions of the state, such as townships, school districts, road districts and similar bodies, thus organizing to the highest degree the state government and affording the greatest liberty of action to even the unimportant branches of state administration.[46]

§ 33. The power to create municipal corporations in the United States—Where vested—(a) In the state.—Public as well as private corporations must in this country, as a rule, with but irregular and unimportant exceptions, derive their right to corporate existence from the force of legislative authority. This authority is exercised by the state, upon which descended this power along with the other prerogatives vested in the crown, upon the emancipation from British dominion. It had been, as we have seen, the peculiar prerogative of the crown to grant charters to municipalities; and, although parliament has usurped this prerogative along with the other royal powers, the acts of parliament conferring charters upon these bodies to this day direct that it shall be lawful for the crown, under the circumstances contemplated by the statute, to grant a charter to the inhabitant householders of any district in England.[47] As the states upon our separation from Great Britain became sovereign, and succeeded to the powers and prerogatives of the crown, it became the peculiar prerogative of the law-giving power of the state to confer the gift of corporate existence upon public as well as private corporations. Consequently the several sovereign states have power to grant charters to municipal and other public corporations, subject only to the prohibitions and limitations imposed by the charters of the respective states;[48] and subject also to the limitation that this power must be exercised in a manner consistent with the powers delegated by the states to the federal government. These principles are established beyond all question.[49] And this sovereign power of the states has

[45] People v. Draper, 15 N. Y. 561, per Brown, J.; People v. Albertson, 55 N. Y. 50; People v. Hurlbut, 24 Mich. 44; s. c. 9 Am. R. 103.

[46] Cooley Const. Lim. 223, note. As an instance of a body possessing unusually pure and immediate form of self-government the New England town is remarkable. It is curious to note that in Rhode Island the towns preceded the state government: See Arnold's History, ch. 7.

[47] Municipal Corporations Act of 1882, § 210.

[48] See post, §§ 44, 45, 46.

[49] 1 Beach Priv. Corp., § 2; People v. City of Riverside, 70 Cal. 461; s. c. 11 Pac. 759; Hope v. Deaderick, 8 Humph. (Tenn.) 1; s. c. 47 Am. D. 597; New Boston v. Dunbarton, 12

been so far recognized that the courts have held that it was not withdrawn even though the state exercising it had at the time of such exercise seceded from the Union and was engaged in war with the United States.[50]

§ 34. **(b) In the federal government.**—To define the power of the federal government to create public corporations it is necessary to consider the general powers possessed by that government, as no express authority to create corporations is granted by the states to that government in the constitution.[51] There being, then, no express delegation of power in the constitution to create corporations, there can be no implied power to do so, except as a means or instrument by which to accomplish the objects for which the federal government was created.[52] The federal government, therefore, has no power to create public or private corporations except where such a power is necessary in order to carry out some power expressly delegated in the constitution to that government.[53] The federal government has, consequently,

N. H. 409. And for cases affirming, in regard to private as well as public corporations, this fundamental principle, see Franklin Bridge Co. v. Wood, 14 Ga. 80; Bell v. Nashville Bank, Peck (Tenn.) 269; Falconer v. Campbell, 2 McLean 195; Thomas v. Dakin, 22 Wend. (N. Y.) 9; Warner v. Beers, 23 Wend. (N. Y.) 103; Nelson v. McArthur, 38 Mich. 204; State v. Covington, 29 Ohio St. 102; Cotton v. Mississippi &c. Co., 22 Minn. 372; Angell & Ames Corp. (11th ed.), § 71.

[50] United States v. Insurance Co., 22 Wall. 99. But it has been considered inexpedient to recognize the existence of a corporation so created by the state, in aid of such a war: 1 Beach Priv. Corp., § 2; Trustees &c. v. Satchwell, 71 N. C. 111; Chicora v. Crews, 6 S. C. (N. S.) 243.

[51] 1 Beach Priv. Corp., § 3, where it is said: "In the convention of states which framed the constitution an effort was made to invest the congress with power to grant acts of incorporation, but after three days of debate the proposition was voted down, eight out of the eleven states represented voting in the negative;" citing Madison Papers, September 14, 1787, and citing also "Arguments by Simon Sterne in Opposition to the Signature by the President of the United States of Senate Bill No. 1305 (50th Congress, 2d Session), to Incorporate the Maritime Canal Company of Nicaragua (Gibson Brothers, Washington, 1889)"; 4 Jefferson Memoirs, Correspondence, etc., 523, 526 (Charlottesville, Va., 1829). One of the reasons of the rejection urged in debate was that congress would then have power to create a bank, which would render the great cities, where there were prejudices and jealousies on that subject, averse to the adoption of the constitution.

[52] 1 Beach Priv. Corp., § 3, citing McCulloch v. Maryland, 4 Wheat. 316.

[53] Beach Priv. Corp. §§ 3–6; U. S. Const., Amend. 10; McCulloch v. Maryland, 4 Wheat. 316; Thomson v. Pacific R. Co., 9 Wall. 579; California v. Railroad Co., 127 U. S. 1, 39; s. c. 8 S. Ct. 1073; Chisholm v. Georgia, 2 Dall. 419; Hollingsworth

under the power to govern the public domain, the incidental and auxiliary power to create municipal corporations in the territories and in the District of Columbia, a district ceded by Virginia and Maryland to the United States as a seat of government.[54] To recapitulate, the power of the state to create public corporations is incidental to its sovereignty, and may be exercised for any lawful purpose not repugnant to its constitution or to the voluntary limitations imposed upon itself by its ratification of the federal compact; while the power of the federal government to create public corporations is an implied power, and exists only in so far as it is necessary for the federal government to create such corporations in order to carry out powers expressly delegated to that government by the states in the constitution.

§ 35. Municipal corporations created by the federal government—(a) Territories.—By virtue of this implied power of the federal government to create corporations where it is necessary to erect such bodies in order to exercise a power expressly delegated in the constitution to that government, the congress of the United States has power to provide for the creation of municipal and other public corporations in the territories, as incidental; and it has been provided by act of

v. Virginia, 3 Dall. 378; Osborn v. President &c., 9 Wheat. 738; Story on Constitution, § 1266. See, on this topic, "National Corporations," 21 Cent. Law J. 428; Hare Amer. Const. Law (Boston, 1889) 98, 105, 111, 249, 1310. For statutes exercising this power, see 19 U. S. Stat. at Large 38; 12 U. S. Stat. at Large 665; 3 U. S. Stat. at Large 266.

[54] Vincennes University v. Indiana, 14 How. 268; Barnes v. District of Columbia, 91 U. S. 540; Stoutenburgh v. Hennick, 129 U. S. 141; s. c. 9 S. Ct. 256. This power of the congress to create municipal corporations stands upon the same basis and is governed by the same principles as its power to create a national bank: McCulloch v. Maryland, 4 Wheat. 316; Osborn v. President &c., 9 Wheat. 738; or its power to authorize the construction of railroads through the territories: California v. Railroad Co., 127 U. S. 1, 39; s. c. 8 S. Ct. 1073. A curious instance of an extension of this implied power is found in the charter granted by the fiftieth congress in its second session to the Maritime Canal Company of Nicaragua, a company organized for the purpose of constructing, equipping and operating a ship canal from the Atlantic to the Pacific ocean through the territory of Nicaragua or Nicaragua and Costa Rica. To the mind of the writer that extension is unwarrantable, as the charter in question can not be considered as necessary to the exercise of any power expressly delegated to the federal government in the constitution: 1 Beach Priv. Corp., § 6; "Argument by Simon Sterne in Opposition to the Signature by the President of the United States of Senate Bill No. 1305 (50th Congress, 2d Session), to Incorporate the Maritime Canal Company of Nicaragua (Gibson Brothers, Washington, 1889)."

congress that the legislative assemblies of the several territories shall not grant private charters or especial privileges, but may by general incorporation acts permit persons to associate themselves together as bodies corporate for mining, manufacturing and other industrial pursuits.[55] And this act has been held to prohibit territorial legislatures from incorporating municipal corporations by special act[56] auxiliary to the express power possessed by the federal government to govern the public domain.[57] This power possessed by the federal government is delegated to the territorial legislature, generally by a provision in the act creating the territory that the power of the territorial legislature shall extend to all rightful subjects of legislation. The general clause embraces the power to create municipal and other corporations.[58]

§ 36. **(b) The District of Columbia.**—The District of Columbia was organized under the act of congress of February 21, 1871.[59] Under this act it was authorized to "exercise all other powers of a municipal corporation not inconsistent with the laws and constitution of the United States and the provisions of this act,"—with the usual powers to sue, be sued, contract, have a seal, etc. It is declared to be, in the first section of the act, a body corporate for municipal purposes. The United States supreme court, having occasion to consider the powers

[55] R. S. U. S., §§ 1889, 1890.

[56] City of Seattle v. Yesler, 1 Wash. Ter. (N. S.) 571.

[57] Vincennes University v. Indiana, 14 How. 268; People v. City of Butte, 4 Mont. 174; s. c. 1 Pac. 414; Burnes v. Mayor &c., 2 Kan. 454; President &c. v. Iowa, 12 How. 1; Story on Const., § 1266; "National Corporations," 21 Cent. Law J. 428; Beach Priv. Corp., § 3, ad finem; Cooley Const. Lim. 37. The legislation of the territorial legislatures must not, of course, be at variance with the territorial organic act, conferring the power to legislate; but such a variance will be presumed to be approved by congress if disregarded for a number of years after the attention of congress has been called to the conflict of legislation: Clinton v. Englebrecht, 13 Wall. 434. For cases showing the complete control of the congress over the territories, see Reynolds v. United States, 98 U. S. 145; National Bank v. Yankton, 101 U. S. 129; Murphy v. Ramsey, 114 U. S. 15; s. c. 5 S. Ct. 747. In the last named case it was decided that congress had power to exclude polygamists from voting.

[58] Vincennes University v. Indiana, 14 How. 268; Burns v. Mayor &c., 2 Kan. 454; Deitz v. City of Central, 1 Colo. 323. This power also necessarily carries with it the right to make by-laws and ordinances to control the members of the municipal corporation: State v. Young, 3 Kan. 445. In Riddick v. Amelin, 1 Mo. 5, the question was raised whether a territorial legislature, not being sovereign, could create a corporation. It was held that the congress had the power to create corporations under the limitations set forth, and could lawfully delegate that power.

[59] 16 U. S. Stat. 419.

of the district so constituted, and the powers of certain of its departments, uses the following language, expressing clearly some of the relations of municipalities: "A municipal corporation in the exercise of all of its duties, including those most strictly local or internal, is but a department of the state. The legislature may give it all the powers such a being is capable of receiving, making it an immature state within its locality. Again, it may strip it of every power, leaving it a corporation in name only; and it may create and recreate these changes as often as it chooses, or it may itself exercise directly within the locality any or all the powers usually committed to a municipality. We do not regard its acts as sometimes those of an agency of the state, and at others those of a municipality, but that, its character and nature remaining at all times the same, it is great or small according as the legislature shall extend or contract the sphere of its action."[60]

§ 37. Municipal corporations by prescription in the United States.—The general rule being that corporations must in this country derive their origin from express legislative enactment, municipal corporations by prescription are in the United States the rare exception; but such municipal corporations concededly exist. Thus, in New York, the existence of a public quasi-corporation, such as a school district, has been proved by prescription.[61] And in Massachusetts and other New England states, it has been decided that where no charter or act of incorporation of a town can be found, it may be proved to be a town by reputation, or it may be shown to have claimed and exercised the powers of a town, with the knowledge and assent of the legislature, and without objection or interruption, for so long a period as to furnish evidence of a prescriptive right.[62] In Illinois the same doctrine has been approved, the opinion of the court stating

[60] Barnes v. District of Columbia, 91 U. S. 540; Stoutenburgh v. Hennick, 129 U. S. 141; s. c. 9 S. Ct. 256.

[61] Robie v. Trustees &c., 35 Barb. (N. Y.) 319. And it is further held in this case that prescriptive proof of the existence of such a corporation also proved that the body possessed all the powers given by law to such corporations. The case is a fair example, as it was one where the trustees of the school district and their predecessors had under the same name and title exercised their functions as such trustees for forty years, without objection.

[62] Inhabitants &c. v. Inhabitants &c., 12 Mass. 400; Dillingham v. Snow, 5 Mass. 547; Bow v. Allenstown, 34 N. H. 351; Bassett v. Porter, 4 Cush. (Mass.) 487; New Boston v. Dunbarton, 15 N. H. 201; Trott v. Warren, 11 Maine 227; State v. Bradley, 54 Conn. 74; s. c. 5 Atl. 861; 2 New Eng. R. 711. In a Massachusetts case the judge remarked, in allowing public reputation to be put in as evidence of incorporation, that it was well known that the public records had been in a large part destroyed by fire: Dillingham v. Snow, 5 Mass. 547.

that municipal corporations are created for the public good and demanded by the wants of the community; and the law, after long continued use of corporate powers with public acquiescence, will presume in favor of their legal existence.[63] The question as to whether in any given instance the municipality is to be deemed incorporated by prescription is one of fact and not of law, and is to be decided by the jury and not by the judge.[64]

§ 38. **The same subject continued—Instances of incorporation by prescription in the United States.**—In Indiana, Gen. William Henry Harrison made a map of an addition to the city of Vincennes in which he marked a certain lot as "General Harrison's Reserve." This lot was assessed and taxed by the city government for sixty years without question or opposition. This fact was considered sufficient to show that the lot was within the corporation limits.[65] So in a Wisconsin case, proceedings by which a certain territory was added to a town were considered regular after twenty years.[66] And ten years has been held a sufficient period to perfect a defective incorporation against collateral attack.[67]

§ 39. **Municipal corporations by implication in the United States.**—The general principles governing the creation by implication of municipal corporations have already been considered in discussing

[63] Jameson v. People, 16 Ill. 257. See also, State v. Leatherman, 38 Ark. 81, where the original incorporation of the municipality was in a court lacking jurisdiction; and it was held that the state itself was estopped by long acquiescence in and recognition of the incorporation as valid, from quo warranto proceedings attacking the incorporation.

[64] Cooley Const. Lim. 238; New Boston v. Dunbarton, 15 N. H. 201; Bow v. Allenstown, 34 N. H. 351; Trott v. Warren, 11 Maine 227.

[65] Am. & Eng. Encyc. of Law, tit. Municipal Corporations, vol. 15, p. 956; Pidgeon v. McCarthy, 82 Ind. 321.

[66] Sherry v. Gilmore, 58 Wis. 324; s. c. 17 N. W. 252.

[67] Austrian v. Guy, 21 Fed. 500. In that case original incorporation of the town was invalid. The town, however, existed de facto and levied taxes. Certain town lots were sold at a tax sale, and a subsequent owner of the lots instituted proceedings to clear up the title. It was held that the incorporation of the town could not be thus collaterally impeached after such a lapse of time. The principles elucidated in the text were applied to a somewhat different state of facts in a Kansas case, where a city was, as a matter of fact, included in a certain class of cities, although, according to a strict legal classification, the city in question belonged to a different class. It was held that as the city was universally recognized to belong to the former class, it could lawfully act as belonging to that class, although de jure belonging to the latter: Back v. Carpenter, 29 Kan. 349.

the creation of English municipal corporations. These principles hold good, of course, in the case of American as well as of English municipalities; and they have often been applied by the courts of this country. So, where the legislature confers or imposes upon a certain body of men powers or liabilities of such a character as to render it necessary to incorporate such body in order to give effect to the legislative intention, the body is considered incorporated to such an extent as to carry out the design of the legislature. For example, in Massachusetts the legislature confers upon the inhabitants of the different school districts power to raise money to erect, repair or purchase a school-house, with other incidental powers of legislation. It was decided in the appellate courts of that state that this legislative act created the inhabitants of the school district a corporation for the purpose of bringing an action on a contract to build a school-house.[68] And in New Hampshire, where a certain territory was annexed by the legislature to the town of Allentown,—the words of the act describing Allentown as a municipal corporation,—such action of the legislature was considered sufficient to create Allentown a municipal corporation by implication.[69] There are many cases in the books where similar principles have been applied in this country.[70]

§ 40. **The same subject continued.**—In a leading New York case Chancellor Kent elaborated the principles indicated in the preceding section. The town of Hempstead, Long Island, was settled in 1644, under a patent from William Kieft, the governor at that time of the Dutch province. By this patent the tract of land comprised in the town was granted to six persons, named therein, with their associates, their heirs and successors, to build a town * * * and to erect a body politic or civil combination among themselves, etc. The chancellor says: "I should conclude that such a grant as this, proceeding from the English government, would have given a qualified corporate capacity to the inhabitants of Hempstead," and he then shows that this is true a fortiori of a Dutch grant, since under the common law of the Dutch, corporations were created with "less ceremony and difficulty even than with us."[71] The implication is in every case that the

[68] Inhabitants &c. v. Wood, 13 Mass. 193; 1 Dillon Munic. Corp., § 43.

[69] Bow v. Allenstown, 34 N. H. 351.

[70] Thomas v. Dakin, 22 Wend. (N. Y.) 9; Denton v. Jackson, 2 Johns. Ch. (N. Y.) 320; Town of North Hempstead v. Town of Hempstead, 2 Wend. (N. Y.) 109; Coburn v. Ellenwood, 4 N. H. 99; Stebbins v. Jennings, 10 Pick. (Mass.) 172; Mahony v. Bank, 4 Ark. 620; Trustees &c. v. Parks, 10 Maine 441; People v. Farnham, 35 Ill. 562; Jameson v. People, 16 Ill. 257; s. c. 63 Am. D. 304; School Com'rs v. Dean, 2 St. & P. (Ala.) 190; Cooley Const. Lim. 238; Angell & Ames Corp., § 77.

[71] Denton v. Jackson, 2 Johns. Ch. (N. Y.) 320.

intent of the creating power was to erect a corporation; and as the intent of that power is controlling, the corporation is deemed to have been thereupon erected. The words "creation by implication," without having in mind the above qualifications, are misleading. But the intent of the legislature must be clearly shown, as the onus probandi rests on those who endeavor to prove the existence of a corporation by implication.[72] So it has been held that creation by implication will not be recognized by the courts, unless it appears that the powers conferred by the legislature can be enjoyed only through such implied incorporation, and in no other way.[73] And it has even been declared that the doctrine of creation by implication will be upheld only where a contract made in good faith can not otherwise be enforced.[74] The creation of corporations by implication, as the term is used, relates not so much to the act of creating as to the method of proving corporate existence. The presumption of corporate existence, after a long space of time, when proof exists of the continued exercise of corporate functions, is not unreasonable, and particularly so where the legislature has by acts recognized such corporate existence.

§ 41. Creation of municipal corporations in the United States—(a) In general.—Until comparatively recent times there were no general laws regulating and providing for the incorporation of municipalities under general rules. In this country, as in England, each district, as its population increased to a point where incorporation became necessary or expedient, applied to the legislature for a special charter, by virtue of which it assumed corporate existence. But this system of incorporation was open to grave and obvious abuses. Being in the nature of special legislation, it possessed all the disadvantages incident to such legislation. The privileges granted by the special charter were greater in the case of one city than of another; and these disparities, with their consequent jealousies, gave just cause for popular dissatisfaction for the system of incorporation by special charter. A remedy was found in establishing general laws under which each district could, by a method of procedure established by the statute, procure its own incorporation whenever it became necessary or desirable. Under these general and uniform laws there was no longer any disparity in the privileges of the different municipalities. Each village, town, city or school district was one of a certain class sharing alike

[72] Society &c. v. Pawlet, 4 Peters 480; Medical Institution v. Patterson, 1 Denio (N. Y.) 61; s. c. 5 Denio (N. Y.) 618; Myers v. Irwin, 2 S. & R. (Pa.) 368; Wells v. Burbank, 17 N. H. 393; 1 Dillon Munic. Corp., § 43; Cooley Const. Lim. 238; 15 Am. & Eng. Encyc. of Law 960.

[73] Stebbins v. Jennings, 10 Pick. (Mass.) 172.

[74] Blair v. West Point, 2 McCrary 459.

the powers and liabilities of the class according to the provisions of the general incorporating act. The great advantage of this system has been universally recognized, and it is used in all of the United States at the present day. In most of the states the legislature is expressly forbidden to incorporate towns or cities by special charter, but it is still allowed in several of the states.[75] In many of the states by constitution or statutory enactment cities operating under special charters are permitted to reorganize under the general law by compliance with certain statutory methods of procedure. Where a city is incorporated under a special charter, and reincorporates under a general law, and the latter contains no provisions relating to schools, it does not abrogate the provisions of the special charter relating to schools. It is only where the provisions of the special charter are inconsistent with the general law that they are repealed.[76]

§ **42.** (b) **By special charter.**—Judge Dillon gives an excellent outline of the provisions of the ordinary special charter creating a municipal corporation. He observes that while these charters were on the whole constructed according to one general model, there was great variety in the particular provisions of the different charters as to the powers conferred and the liabilities imposed on the corporation. Following his outline of the provisions of such a charter, we find that the first incorporating clause of the instrument usually declares "that the inhabitants of the town of Dale are hereby constituted a body politic and corporate by the name of 'The Town of Dale,' and by that name shall have perpetual succession, may use a common seal, sue and be sued, purchase, hold and sell property," etc. The charter then proceeds to provide for the legislative body of the municipal corporation, usually called the town or city council, regulating the number of councilmen or aldermen and the organization of the body. The qualifications of voters are then prescribed and the manner of holding elec-

[75] In the following states the legislature was allowed to create municipal corporations by special act: New York (Constitution 1846, art. 8, § 1); Michigan (Constitution 1850, art. 15, § 1); California (Constitution 1849, art. 4, § 31); Minnesota (Constitution 1857, art. 10, § 2); Oregon (Constitution 1857, art. 11, § 2); Louisiana (Constitution 1864, title 7, art. 121); Nevada (Constitution 1864, art. 8, § 1). Also in Maine, Maryland, North Carolina, Texas and Alabama: 15 Am. & Eng. Encyc. of Law, tit. Munic. Corp., p. 958, n. 3. The constitution of Missouri prohibits the creation of any municipal corporation by special act, unless the city contain at least five thousand inhabitants; and in that case the special charter must be approved by a vote of the people: Constitution 1865, art. 8, § 5.

[76] Brenan v. People, 176 Ill. 620; s. c. 52 N. E. 353.

tions for the members of the council and for the executive officers of the town. The powers and duties of these executives are defined and limited. The charter generally closes with a specific enumeration of the powers of the city council, which are numerous, and include the right to levy taxes for municipal purposes, to enact ordinances to protect the health and safety of the citizens of the town, and in general to exercise those subordinate powers of local legislation which the state deemed it necessary and expedient to delegate to the council for the purposes of local self-government.[77]

§ 43. (c) **By general municipal incorporating acts.**—The legislatures of the several states, in compliance with the provisions of their constitutions respectively, and subject to the limitations imposed by those provisions, have passed general incorporating and enabling acts providing for the incorporation and government of municipalities within the limits of the state. These acts generally provide in substance that all corporations organized for purposes of municipal government shall be divided into certain specified classes, according to the number of inhabitants of the city, town or village. The manner of incorporating each class, and the powers, duties and liabilities of the several classes, are fully prescribed by the act. The method of incorporation, and the powers, duties and liabilities of each class, differ from those of the other classes; but the method of incorporation, the powers, duties and liabilities of the corporations included in any one of the classes, are always uniform. It is sometimes provided in these acts that all special charters theretofore granted shall be repealed and abolished, and that all the municipal corporations of the state, whether created before or after the passage of the act, shall be governed by its provisions.[78] On the other hand, it is at times prescribed that municipalities previously incorporated by special act of the legislature shall not be affected by the passage of the general act, unless such corporation shall elect to come in and submit to the provisions of the general act.[79]

§ 44. **Constitutional limitations of legislative power to create municipal corporations.**—In many of the states there are constitutional provisions that the legislature shall provide by general law for

[77] 1 Dillon Munic. Corp., § 39.

[78] See post, ch. 4.

[79] Burke v. Jeffries, 20 Iowa 145. Where a city, organized under a special charter, reorganizes under a general law and there is no provision of the general law applicable to a given subject, the special charter on that subject remains in force if the general law provides that all laws and parts of laws not inconsistent therewith shall remain in force: Smith v. People, 154 Ill. 58; s. c. 39 N. E. 319.

the organization of cities, towns and municipalities, and the creation of municipal corporations by special act is expressly forbidden.[80] Some of the states have provided that their legislatures shall create a uniform system of county, town and municipal government.[81] Massachusetts[82] provides that the legislature may charter cities in towns having more than twelve thousand inhabitants. Pennsylvania[83] and Texas[84] have the same provision in regard to towns of over ten thousand. In Missouri[85] and California,[86] the remarkable provision exists that any city having a population of more than a hundred thousand may frame a charter for itself. This, as of course, is subject to special restrictions, and the method in which the charter shall be framed is carefully defined.

§ 45. Construction of such constitutional limitations—(a) Corporations "for municipal purposes" and "bodies politic or corporate."—The constitutions of Missouri and Illinois, of California and of Ala-

[80] This is the case in Ohio (Constitution, art. 13, § 6); Illinois (Constitution, art. 10, § 6); Michigan (Constitution, art. 15, § 13); Wisconsin (Constitution, art. 11, § 3); Kansas (Constitution, art. 12, § 5); Nebraska (Constitution, art. 10, §§ 4, 5); Virginia (Constitution, art. 6, § 20); North Carolina (Constitution, art. 8, § 4); Missouri (Constitution, art. 9, § 7); Arkansas (Constitution, art. 12, § 3); California (Constitution, art. 11, § 6); and Nevada (Constitution, art. 8, § 8). Also in Iowa, New Jersey, West Virginia, Tennessee, Florida and Indiana. This constitutional provision is construed in Ohio by Thomas v. Ashland, 12 Ohio St. 124; Welker v. Potter, 18 Ohio St. 85; Atkinson v. Marietta &c. R. Co., 15 Ohio St. 21; State v. City of Cincinnati, 20 Ohio St. 18; in Illinois by Covington v. East St. Louis, 78 Ill. 548; in Wisconsin by State v. Forest Co., 74 Wis. 610; s. c. 43 N. W. 551; Attorney-General v. Chicago &c. R. Co., 35 Wis. 425; Kimball v. Rosendale, 42 Wis. 407; s. c. 24 Am. R. 421; Stevens Point &c. Co. v. Reilly, 44 Wis. 295; Land &c. Co. v. Brown, 73 Wis. 294; s. c. 40 N. W. 482; 3 L. R. A. 472; in Kansas by City of Wyandotte v. Wood, 5 Kan. 603; Atchison v. Bartholow, 4 Kan. 124; in New Jersey by State v. Mayor &c., 40 N. J. L. 550; State v. Borough &c., 52 N. J. L. 32; s. c. 18 Atl. 694; 6 L. R. A. 57; in Missouri by State v. Leffingwell, 54 Mo. 458; in Nebraska by Dundy v. Board of Com'rs &c., 8 Neb. 508; in Indiana by City of Lafayette v. Jenners, 10 Ind. 70; in Iowa by Von Phul v. Hammer, 29 Iowa 222. See also, School District v. Insurance Co., 101 U. S.. 472; 1 Dillon Munic. Corp., §§ 45–49; Morawetz Corp. (2d ed.), §§ 9–13.

[81] Wisconsin (Constitution, art. 4, § 23); Missouri (Constitution, art. 9, § 7); California (Constitution, art. 11, § 4; Nevada (Constitution, art. 4, § 25); Georgia (Constitution, art. 11, § 31); Florida (Constitution, art. 4, § 21). See State v. Riordan, 24 Wis. 484; State v. Dousman, 28 Wis. 541; State v. Forest Co., 74 Wis. 610; s. c. 43 N. W. 551; State v. Stark, 18 Fla. 255; Lake v. State, 18 Fla. 501.

[82] Constitutional Amendments, 2.

[83] Constitution, art. 15, § 1.

[84] Constitution, art. 11, § 4.

[85] Constitution, art. 9, § 16.

[86] Constitution, art. 11, § 8.

bama, prohibit the creation by special act of corporations "for municipal purposes." In Missouri it has been held that such a corporation must be connected with the municipal corporation itself and must be connected with the municipalities;[87] and a corporation formed for the purpose of filling up ponds in the city of St. Louis was considered to be for municipal purposes within the meaning of the act.[88] In Illinois an act organizing a board of park commissioners was held to be constitutional under this restriction.[89] In an Alabama case a special act creating a corporation to carry on a public school was held to be constitutional.[90] A county in California has been held not to be a corporation for municipal purposes;[91] and it has also been held that under this constitutional limitation no powers can be conferred upon a corporation created for other than municipal purposes, except by general acts.[92] The constitution of New York provides that a two-thirds majority of the general assembly shall be necessary for the passage of any act "creating, continuing, altering or renewing any body politic or corporate." The term "body politic or corporate" has been construed to include public as well as private corporations.[93]

§ 46. (b) **"Corporate powers."**—In Nebraska, Kansas, Ohio and New Jersey there are constitutional provisions that the legislature shall pass no special act conferring corporate powers. This prohibition has been held in Kansas and Ohio to apply to acts creating municipal corporations;[94] but in New Jersey the provision has been construed to include only private corporations.[95] In Nebraska an act authorizing a school district to issue bonds to build a school-house

[87] State v. Leffingwell, 54 Mo. 458.

[88] Board &c. v. Shields, 62 Mo. 247.

[89] People v. Salomon, 51 Ill. 37.

[90] Horton v. Mobile School Com'rs, 43 Ala. 598.

[91] People v. McFadden, 81 Cal. 489; s. c. 22 Pac. 851; 29 Am. & Eng. Corp. Cas. 37.

[92] San Francisco v. Spring Valley Waterworks, 48 Cal. 493. The dual nature of the municipal government of the county and city of San Francisco explained, in Kahn v. Sutro, 114 Cal. 316; s. c. 46 Pac. 87; 33 L. R. A. 620.

[93] Purdy v. People, 4 Hill (N. Y.) 384; rev'g s. c. 2 Hill (N. Y.) 31.

[94] In re City of Council Grove, 20 Kan. 619; City of Wyandotte v. Wood, 5 Kan. 603; Atchison v. Bartholow, 4 Kan. 124; Gilmore v. Morton, 10 Kan. 491; State v. City of Cincinnati, 20 Ohio St. 18; State v. Mitchell, 31 Ohio St. 18; State v. Mitchell, 31 Ohio St. 592; State v. Pugh, 43 Ohio St. 98; s. c. 1 N. E. 439. See generally on this subject: Commercial Nat. Bank v. City of Iola, 2 Dillon 353; s. c. 20 Wall. 655; Olcott v. Supervisors, 16 Wall. 678; Savings Assn. v. Topeka, 3 Dillon 376; School Dist. v. Insurance Co., 103 U. S. 707.

[95] State v. Newark, 40 N. J. L. 550.

was considered void as coming within the prohibition of the provision.[96]

§ 47. **Miscellaneous instances of such constitutional limitations.**—A provision in the Rhode Island constitution that when any bill shall be presented to create a corporation for any other than for religious, literary or charitable purposes, or for a military or fire company, it shall be continued till another election of members of the general assembly shall have taken place, and public notice of its pendency shall be given, does not apply to public corporations.[97] In California there is a constitutional provision that the charters of cities must be consistent with and subject to the constitution of the state. Under this prohibition it has been held that charters repugnant in some of their provisions to the general laws of the state are not entirely valid.[98] Constitutional limitations on the legislative power to incorporate towns and cities must of course be construed with reference to other portions of the constitutions and the statutes.[99]

§ 48. **Incorporation by courts.**—The legislatures of certain states authorize and empower a court to incorporate a certain district upon the petition of a designated number of the inhabitants of the district. The constitutionality of such acts has been questioned as being an undue delegation of legislative powers. In Iowa such an act has

[96] Clegg v. School Dist., 8 Neb. 178; Dundy v. Board &c., 8 Neb. 508. In Kansas, however, an act for the same purpose has been upheld as not unconstitutional: Beach v. Leahy, 11 Kan. 23.

[97] State v. District of Narragansett, 16 R. I. 424; s. c. 16 Atl. 901.

[98] In re Strand (Cal.), 21 Pac. 654; Brooks v. Fischer, 79 Cal. 173; s. c. 21 Pac. 652; 4 L. R. A. 429.

[99] So when the constitution of Wisconsin provided that "the legislature may confer on the boards of supervisors of the several counties, . . . such powers, of a local, legislative and administrative character, as they shall from time to time prescribe;" and the statutes (R. S., §§ 670, 671) delegated to the county board of the several counties the power "to set off, organize, vacate and change the boundaries of the towns in their respective counties;" and a special act divided Forest county into three towns, and provided that none of said towns should "be divided, vacated or have the boundaries thereof changed by the board of supervisors of said county until the question of said division," etc., "be submitted to a vote of the legal electors of the town or towns to be affected thereby," on petition of two-fifths of such legal voters,—it was held that such act was not unconstitutional because it was a discrimination between counties, as the legislature has power to resume the authority conferred by sections 670, 671, upon the county boards: State v. Forest Co., 74 Wis. 610; s. c. 43 N. W. 551.

been upheld as not being unconstitutional.[100] A similar ruling has been made in the courts of Colorado.[101] But in Wisconsin an act authorizing the district judge to declare a town or village incorporated upon the petition of a majority of the taxable inhabitants praying for such incorporation, was declared unconstitutional as being a delegation of legislative functions to a judicial court.[102] In Arkansas,

[100] The code of Iowa provides that where the inhabitants of any part of any county not embraced in any incorporated city or town shall desire to be organized into a city or town, they may apply to the district court by petition signed by not less than twenty-five of the qualified electors of such territory, and the court shall appoint commissioners to call an election in the territory; and, if the election be in favor of the incorporation, the clerk shall give notice of the result, and copies of all the papers and record entries shall be filed in the recorder's office of the county and in the office of the secretary of state; and when such papers are filed, and officers elected, the incorporation shall be complete. The sections further provide for the annexation of territory to an incorporated city or town on the filing of a like petition and having like proceedings. It was held that the act is not unconstitutional as authorizing the creation of a municipal corporation by judicial act instead of by the legislature, since the only power thereby conferred on the court is the appointment of commissioners of the election: Ford v. Town of North Des Moines, 80 Iowa 626; s. c. 45 N. W. 1031.

[101] People v. Fleming, 10 Colo. 553; s. c. 16 Pac. 298. See also, Mayor &c. v. Shelton, 1 Head (Tenn.) 24.

[102] Territory v. Stewart, 1 Wash. 98; s. c. 23 Pac. 405; 8 L. R. A. 106; 29 Am. & Eng. Corp. Cas. 22, where the judge expressly dissented from the doctrine of People v. Fleming, supra; and quoted Judge Cooley (Cooley Const. Lim. (6th ed.) 141), as follows:—"We think the better doctrine is that laid down by Judge Cooley in his work on Constitutional Limitations, which is as follows:—'The prevailing doctrine in the courts appears to be that except in those cases where, by the constitution, the people have not expressly reserved to themselves a power of decision, the function of legislation can not be exercised by them even to the extent of accepting or neglecting a law which has been framed for their consideration.'" But the same learned author quoted by the judge in the case just cited says elsewhere, after referring to the power of the legislature to create and abolish municipal corporations without reference to the desires of the incorporators:—"Nevertheless, as the corporators have a special and peculiar interest in the terms and conditions of the charter, in the powers conferred and liabilities imposed, as well as in the general question whether they shall originally be or afterwards remain incorporated at all or not, and as the burdens of municipal government must rest upon their shoulders, and especially as by becoming incorporated they are held in law to undertake to discharge the duties the charter imposes, it seems eminently proper that their voice should be heard on the question of their incorporation, and that their decisions should be conclusive unless for strong reason of state policy and local necessity it should seem important for the state to overrule

also, the courts have decided that the legislature can not delegate to the courts the power to create municipal corporations.[103]

§ 49. **The same subject continued.**—In order that the courts may acquire jurisdiction under these acts it is necessary for the petition for incorporation to be signed by the proportion of inhabitants required by the statute.[104] The findings of the court in these cases will not in general be disturbed by appellate courts;[105] and the

the opinion of the local majority. The right to refer any legislation of this character to the people peculiarly interested does not seem to be questioned and the reference is by no means unusual:" Cooley Const. Lim. (6th ed.) 139; citing Bull v. Read, 13 Gratt. (Va.) 78; Corning v. Greene, 23 Barb. (N. Y.) 33; Morford v. Unger, 8 Iowa 82; President &c. v. Society &c., 24 N. J. L. 385; Gorham v. Springfield, 21 Maine 58; Commonwealth v. Judges &c., 8 Pa. St. 391; Commonwealth v. Painter, 10 Pa. St. 214; Call v. Chadbourne, 46 Maine 206; State v. Scott, 17 Mo. 521; State v. Wilcox, 45 Mo. 458; Hobart v. Supervisors &c., 17 Cal. 23; Bank &c. v. Brown, 26 N. Y. 467; Steward v. Jefferson, 3 Harr. (Del.) 335; Burgess v. Pue, 2 Gill (Md.) 11; Lafayette &c. R. Co. v. Geiger, 34 Ind. 185; Clarke v. Rogers, 81 Ky. 43; People v. City of Butte, 4 Mont. 174; s. c. 1 Pac. 414; Smith v. McCarthy, 56 Pa. St. 359; Smyth v. Titcomb, 31 Maine 272; Erlinger v. Boneau, 51 Ill. 94; Lammert v. Lidwell, 62 Mo. 188; Mayor &c. v. Finney, 54 Ga. 317; Response to House Resolution, 55 Mo. 295; People v. Fleming, 10 Colo. 553; s. c. 16 Pac. 298; Graham v. City of Greenville, 67 Tex. 62; s. c. 2 S. W. 742.

[103] State v. Leatherman, 38 Ark. 81; State v. Jennings, 27 Ark. 419. See also, State v. Simons, 32 Minn. 540. Under Iowa Code, §§ 569, 570, —proceedings to incorporate a town, —application must be presented to the court and not the judge: State v. Council, 106 Iowa 731; s. c. 77 N. W. 474.

[104] So under the Pennsylvania statute it has been held that where a court finds that it is doubtful if a petition for the incorporation of a borough is signed by a majority of the freeholders residing within the proposed limits, it loses jurisdiction to entertain the petition or take further proceedings thereunder: In re Borough of Taylorsport (Pa.), 18 Atl. 224. And in the same case it was held that the court could not acquire jurisdiction by reducing the territorial limits so that there would be a majority of freeholders left, whose names are on the petition: In re Borough of Taylorsport (Pa.), 18 Atl. 224.

[105] As when, upon proceedings by a village under Iowa Code, §§ 440–446, to be severed from the limits and control of an incorporated town, the trial court has found in favor of the petitioners, the supreme court will not disturb such finding, unless there has been a manifest abuse of discretion: Ashley v. Town of Calliope, 71 Iowa 466; s. c. 32 N. W. 458. And where the Texas statute required that, before an election to determine if a city should be incorporated should be ordered by a county judge, proof should be made before him that the territory sought to be incorporated contained the requisite number of inhabitants, the finding of a county judge in such a case was considered conclusive, as no provision was made for revising

provisions of the statute are construed with considerable liberality.[106]

§ 50. **Classes of cities under general incorporating acts.**—As indicated in the preceding sections, it is customary under the general municipal incorporating acts for the municipal corporations of the state to be divided into classes according to the number of inhabitants of the incorporated territory. Under these statutes the municipality takes its position in the class to which it belongs without any acceptance by the incorporators of their allotment to that class. For example, the Utah law divides cities into classes, and provides the way, but not an exclusive one, by which cities shall determine to which class they belong. Under this provision it was decided that the court would take judicial notice of the class to which a city belongs, and that the city would become a member of its proper class without anything done on its part.[107] And likewise by the Nebraska statute, which provides that "all cities, towns and villages containing more than fifteen hundred and less than fifteen thousand inhabitants shall be cities of the second class, and be governed by the provisions of this chapter, unless they shall adopt a village government, as hereinafter provided,"—all towns and villages containing more than fifteen hundred and less than fifteen thousand inhabitants are created by the force of such act into cities of the second class, without any acceptance or other act of such town or city, or of its inhabitants.[108]

§ 51. **The corporate limits—Territory of the corporation.**—The general incorporating acts make provision for determining the cor-

it: State v. Goowin, 69 Tex. 55; s. c. 5 S. W. 678.

[106] In Pennsylvania, a proposed borough which contains a small assemblage of houses, collocated on the plan of streets and lanes, is entitled to incorporation by the courts, with the concurrence of the grand jury, under act of Pennsylvania of 1834, § 1 (Brightly Purd. Dig., p. 196, § 1), which provides that "the several courts of quarter sessions within the commonwealth shall have power, by and with the concurrence of the grand jury of the county, to incorporate any town or village within their respective jurisdictions:" In re Borough of Edgewood, 130 Pa. St. 348; s. c. 18 Atl. 646. And under General Statutes Kansas, 1868, ch. 108, § 1, conferring power upon the probate court to declare any town or village incorporated upon petition, the probate court has power to declare a town to be incorporated as a village: Mendenhall v. Burton, 42 Kan. 570; s. c. 22 Pac. 558. Where the report of a grand jury, on a petition for incorporation of a borough, referred to "the annexed petition," and it appeared that the petition was enfolded with it, but not attached to the report, it was not error for the court to order the clerk to attach it: In re Incorporation of Pennsburgh (Pa.), 13 Atl. 93.

[107] People v. Page, 6 Utah 353; s. c. 23 Pac. 761.

[108] State v. Babcock, 25 Neb. 709; s. c. 41 N. W. 654.

porate limits of the municipalities created under those acts; and in the case of incorporation by special act, the limits of the city or town are expressly defined in the act of incorporation. The Pennsylvania statute provides that whenever an application shall be made, by the freeholders of any town, for incorporation into a borough, and the boundaries embrace lands exclusively used for farming, the court of quarter sessions of the county where such application is made may, at the request of the party aggrieved, change such boundaries so as to exclude such land. The proposed boundaries can be modified, "at the request of the party aggrieved," only at the time the charter is before the court for approval.[109] In Texas the fact that the corporate limits include a number of acres of purely agricultural land will not invalidate the corporation.[110] The description of the territory to be incorporated should be sufficiently definite to allow identification of the territory. Thus in Maine, a description which, in a deed by the state, would be sufficient to describe a plantation, sufficiently describes it in the record of a meeting for its organization.[111]

[109] In re Borough of Wilkinsburg, 131 Pa. St. 368; s. c. sub nom. Appeal of Singer, 18 Atl. 931. In the same state it has been held that a village seeking to incorporate with itself adjacent territory, with the consent of its landowners, should not be denied the privilege because of objection, made by persons outside the disputed territory, that taxable property would be thereby withdrawn from their control: In re Borough of Edgewood, 130 Pa. St. 348; s. c. 18 Atl. 646. And in the same case it was decided that the existence of a natural boundary line between two villages, such as a deep, wooded ravine, is not such division of territory as requires separate corporate existence; and where a majority of the landowners on each side of the ravine demand incorporation with one of the villages into a borough, it can not be said that the limits of that village would be unduly extended, or adjacent territory of the neighboring village invaded by granting the application: In re Borough of Edgewood, 130 Pa. St. 348; s. c. 18 Atl. 646.

[110] State v. Town of Baird, 79 Tex. 63; s. c. 15 S. W. 98. And under the same Texas statute, where a town has been incorporated by a legal election, its incorporation will not be declared invalid because there is included within the corporate limits land not laid off into lots or blocks, and the house of one relator, who, though he does no business in the town, yet attends church in it, and sends his children to school there: State v. Town of Baird, 79 Tex. 63; s. c. 15 S. W. 98. The law does not contemplate the inclusion of farm lands not adapted to municipal purposes in corporate limits: State v. Mote, 48 Neb. 683; s. c. 67 N. W. 810. The fact that creating certain territory into a borough may not be immediately advantageous to a few property owners will not prevent incorporation, where it will be greatly advantageous to the entire community: In re Borough of Prospect Park, 166 Pa. St. 502; s. c. 31 Atl. 257. It may include unplatted farm land: Indiana Imp. Co. v. Wagner, 138 Ind. 658; s. c. 38 N. E. 49.

[111] State v. Woodbury, 76 Maine 457.

§ 52. Acceptance of charter by corporators not necessary.—It is now well settled that the consent of the corporators is not necessary to the validity of the incorporation of municipalities. The acts, whether general or special, creating municipal corporations, are laws, and as such are binding upon all persons subject thereto, whether consenting or unwilling.[112] Although this power of the legislature to force a municipal corporation upon unwilling corporators is undoubted, the exercise of such power has been held to be contrary to the genius of our government.[113]

§ 53. The same subject continued.—Although the legislature is not bound to consider the wishes of the corporators in creating municipal corporations, it is constitutional for the legislature to submit a proposed charter to the inhabitants of the district to be incorporated, to be adopted or rejected by a vote of those inhabitants.[114] Thus, the question of the consolidation of Pittsburg and certain adjacent districts into one corporation was submitted to the vote of the persons interested; and the act submitting the proposed measure was considered constitutional.[115] On the same principle it has been held in New York that a statute affecting a certain municipality shall terminate unless assented to by the voters of the corporation within a fixed time.[116]

[112] People v. City of Butte, 4 Mont. 174; s. c. 1 Pac. 414; Gorham v. Springfield, 21 Maine 58; Berlin v. Gorham, 34 N. H. 266; State v. Canterbury, 28 N. H. 195, 218; Bristol v. New Chester, 3 N. H. 524; State v. Curran, 12 Ark. 321; People v. Wren, 5 Ill. 269; Coles v. Madison Co., 1 Ill. 154; Warren v. Mayor &c., 2 Gray (Mass.) 84; People v. Morris, 13 Wend. (N. Y.) 325; Fire Department v. Kip, 10 Wend. (N. Y.) 267; People v. President &c., 9 Wend. (N. Y.) 351; People v. Stout, 23 Barb. (N. Y.) 349; Proprietors &c. v. Horton, 6 Hill (N. Y.) 501; Wood v. President &c., 9 Cow. (N. Y.) 194; Morford v. Unger, 8 Iowa 82; Taylor v. New Berne, 2 Jones Eq. (N. C.) 141; State v. Babcock, 25 Neb. 709; s. c. 41 N. W. 654; Zabriskie v. Railroad Co., 23 How. 381.

[113] President &c. v. Society &c., 24 N. J. L. 385.

[114] Mayor &c. v. Finney, 54 Ga. 317; Alcorn v. Hamer, 38 Miss. 652; Clarke v. Rogers, 81 Ky. 43; Call v. Chadbourne, 46 Maine 206; People v. McFadden, 81 Cal. 489; s. c. 22 Pac. 851; People v. Salomon, 51 Ill. 37; People v. Reynolds, 10 Ill. 1; President &c. v. Society &c., 24 N. J. L. 385; Chosen Freeholders &c. v. State, 24 N. J. L. 718; In re Henry St., 123 Pa. St. 346; s. c. 16 Atl. 785; Commonwealth v. Painter, 10 Pa. St. 214; Commonwealth v. Judges, 8 Pa. St. 391; Bull v. Read, 13 Gratt. (Va.) 78; State v. Scott, 17 Mo. 521; State v. Wilcox, 45 Mo. 458; Lafayette &c. R. Co. v. Geiger, 34 Ind. 185; State v. Noyes, 30 N. H. 279; Foote v. City of Cincinnati, 11 Ohio 408.

[115] Smith v. McCarthy, 56 Pa. St. 359.

[116] Corning v. Greene, 23 Barb. (N. Y.) 33.

§ 54. Substantial compliance with incorporating acts necessary.—If the requirements of the acts authorizing the creation of municipal corporations are substantially followed, the courts will in general uphold the proceedings, and will not declare the incorporation void because unessential formalities have been overlooked in whole or in part. So in Nebraska, where it was apparent that a city of the second class had in fact been duly organized in good faith, mere irregularities in some of the proceedings would not, it was held, render the organization void.[117] Following this principle, the courts will presume that the necessary formalities were performed in the absence of proof to the contrary.[118] Nor is it always necessary for the records to show on their face that all the conditions required by the statute were present.[119]

[117] City of Omaha v. City of South Omaha, 31 Neb. 378; s. c. 47 N. W. 1113.

[118] For instance, where a committee was appointed by the court to establish the divisional line between towns in response to a petition in accordance with the Vermont statute, it was presumed, on exceptions to the committee's report, that all the facts alleged in the petition, and which were necessary to be established in order to entitle the petitioner to the relief prayed for, were either admitted or proved at the preliminary hearing: Town of Somerset v. Town of Glastenbury, 61 Vt. 449; s. c. 17 Atl. 748. And in the same case it was held that it was not necessary that it should appear by the report of the committee that they were sworn as required by law: Town of Somerset v. Town of Glastenbury, 61 Vt. 449; s. c. 17 Atl. 748.

[119] By the code of West Virginia of 1887, ch. 47, § 49, it is provided that the corporate limits of towns containing a population of less than two thousand inhabitants shall be changed by a vote ordered by the council, the result of which vote, if in favor of the change, shall be certified to the circuit court. Section 49 provides that the circuit court shall enter an order approving and confirming the change, and directing a copy certified to the council, etc. It was held to be not necessary to the validity of the order approving such change that it should show on its face that the town contained less than two thousand inhabitants: Davis v. Town of Point Pleasant, 32 W. Va. 289; s. c. 9 S. E. 228; Point Pleasant Bridge Co. v. Town of Point Pleasant, 32 W. Va. 328; s. c. 9 S. E. 231. See also, Attorney-General v. Rice, 64 Mich. 385; s. c. 31 N. W. 203. But where the Pennsylvania statute required that a petition for the incorporation of a borough should be signed by the petitioners within three months immediately preceding its presentation to the court, that fact need not be stated in the petition, but must appear in the record: In re Summit Borough, 114 Pa. St. 362; s. c. 7 Atl. 219; In re Osborne, 101 Pa. St. 284. The prelimianry steps in regard to the formation of a municipal corporation are usually prescribed by the statute and must be substantially complied with, as to notice, petition, description and otherwise. The requirements preliminary to organization are mandatory: Huff v. Preuitt (Tex. Civ. App.), 53 S. W. 844; State v. Frost,

§ 55. Instances of irregularities in incorporation.—The Pennsylvania act of 1834, relating to the incorporation of boroughs, provided for a reference of an application for incorporation to the grand jury, and that, if a majority thereof, "after a full investigation of the case, shall find that the conditions presented by this act have been complied with, and shall believe that it is expedient to grant the prayer of the petitioners, they shall certify the same to the court." Under this provision an indorsement of "approved" on the petition by the foreman of the grand jury, with his signature, was not considered a sufficient certificate.[120] But the failure to mark as "filed" a plot of a borough, sought to be incorporated, at the time it was presented, can be cured by an order for it to be so marked nunc pro tunc, according to a decision in the same state.[121] The constitution of California relating to the adoption of city charters provided that the charter should be "submitted to the legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each house, it should become the charter of such city." The resolution of approval need not be in the form of a bill passed in the ordinary manner, and approved by the governor, as the constitution does not make the governor a part of the legislature.[122] The sufficiency of the petition as to reasons for annexation is in the discretion of the authority passing upon it.[123] On an application to a county judge for an election to determine the question of incorporation, a hearing is necessary; and it is not enough that the judge is satisfied of his own knowledge that the proposed territory has the requisite number of inhabitants.[124] Commissioners, in incorporating a city of the third class, must state in the order that a majority of the taxpayers are in favor of it; that the town contains over 250 and less than 2,000 inhabitants; and must designate the metes and bounds.[125] Filing of a certified copy of the order of the board of supervisors declaring a municipality duly incorporated is necessary to a valid incorporation.[126]

103 Tenn. 685; s. c. 54 S. W. 986; Angel v. Town of Spring City (Tenn. Ch.), 53 S. W. 191. An attempted organization without complying with the statutory requirements is void: Town of Woodbury v. Brown, 101 Tenn. 707; s. c. 50 S. W. 743.

[120] In re Summit Borough, 114 Pa. St. 362; s. c. 7 Atl. 219.

[121] Appeal of Gross, 129 Pa. St. 567; s. c. 18 Atl. 557.

[122] Brooks v. Fischer, 79 Cal. 173; s. c. 21 Pac. 652; 4 L. R. A. 429; In re Strand (Cal.), 21 Pac. 654.

[123] Windfall Mfg. Co. v. Emery, 142 Ind. 456; s. c. 41 N. E. 814. But see Forsythe v. City of Hammond, 142 Ind. 505; s. c. 41 N. E. 950; 30 L. R. A. 576.

[124] Huff v. Preuitt (Tex. Civ. App.), 53 S. W. 844.

[125] State v. Bilby, 60 Kan. 130; s. c. 55 Pac. 843.

[126] People v. Town of Linden, 107 Cal. 94; s. c. 40 Pac. 115.

§ 56. Notice of incorporation.—It is frequently provided in the acts relating to the incorporation of municipalities that notice of the proposed incorporation be published for a prescribed period. In Florida it has been held that where such notice has been given, the proceedings for incorporation may be had on the last day of the notice.[127] In that case the statute required the notice to be published "for a period of not less than thirty days." According to the judicial construction of this requirement, it was complied with if thirty days' notice had been given by excluding the first and including the last day; and it was held that the statute did not mean thirty clear days.[128] The notice must be sufficiently explicit to enable the proposed corporators to vote intelligently upon the question of incorporation.[129] And where all the parties interested in proceedings to incorporate a municipality are in court, they can not be heard to object that the notice of the proceedings was insufficient.[130]

§ 57. Validity of incorporation—How tested.—The state, being the creator of municipal corporations, is the proper party to impeach the validity of their creation; and, consequently, where the corporation is acting under color of law and is recognized by the state as so acting, its corporate existence can not be collaterally attacked.[131] This doctrine applies even though the validity of the incorporation may be

[127] State v. Town of Winter Park, 25 Fla. 371; s. c. 5 So. 818.

[128] State v. Town of Winter Park, 25 Fla. 371; s. c. 5 So. 818.

[129] A notice by the county supervisors of an election to decide upon the incorporation of a California city, on petition of proper parties, the notice stating that the "petition set forth the boundaries of the proposed corporation, and stated the number of inhabitants therein to be about three thousand," was decided to be a sufficient notice to enable the voters to classify the proposed municipal corporation under the law in cities of the sixth class, according to the statute of that state, and to vote intelligently upon the question of incorporation: People v. City of Riverside, 70 Cal. 461; s. c. 11 Pac. 759.

[130] In re Edgewood Borough, 130 Pa. St. 348; s. c. 18 Atl. 646.

[131] Society &c. v. Pawlet, 4 Pet. 480; Bird v. Perkins, 33 Mich. 28; People v. Maynard, 15 Mich. 463; Lanning v. Carpenter, 20 N. Y. 447; Rumsey v. People, 19 N. Y. 41; Swain v. Comstock, 18 Wis. 486; Jameson v. People, 16 Ill. 257; s. c. 63 Am. D. 304; Tisdale v. President &c., 46 Ill. 9; Kettering v. Jacksonville, 50 Ill. 39; Town of Searcy v. Yarnell, 47 Ark. 269; s. c. 1 S. W. 319; Louisville &c. R. Co. v. Shires, 108 Ill. 617; Henderson v. Davis, 106 N. C. 88; s. c. 11 S. E. 573; Kayser v. Bremen, 16 Mo. 88; State v. Fuller, 96 Mo. 165; s. c. 9 S. W. 583; State v. Carr, 5 N. H. 367; Hamilton v. President &c., 24 Ill. 22; Worley v. Harris, 82 Ind. 493; Mendenhall v. Burton, 42 Kan. 570; s. c. 22 Pac. 558.

attacked on constitutional grounds.[132] In Illinois a town brought an action against a citizen to recover a tax on property in the town, and it was decided by the court that the validity of the incorporation of the town could not be impeached in such an action.[133] If the state acquiesces in the validity of a municipal corporation and recognizes the corporation as valid for a long period, it will be estopped from denying the validity of the incorporation.[134] In the words of Judge Cooley: "The state itself may justly be precluded, on the principle of estoppel, from raising such an objection where there has been long acquiescence and recognition."[135]

§ 58. **The same subject continued.**—And it may be laid down as a general principle that where the validity of the incorporation of a municipality is attacked, the presumption is strongly in favor of its validity.[136] In a Wisconsin case it was held, following this principle, that the complaint in an action against a city need not allege that the defendant was a municipal corporation.[137] A striking application of this doctrine is found in an Indiana case, where an information in a proceeding in the nature of a quo warranto to test the legality of the organization and incorporation of a city, which averred that a census was not taken as required by law, and that a majority of the legal voters of the town did not vote in favor of the adoption of a city charter, but which failed to aver that the clerk and inspector did not do their duty, and make a suitable record as required by law, was held bad on demurrer, because such record was considered conclusive as to all questions except as to whether a majority of the votes cast were in favor of the proposed change.[138]

§ 59. **Existence not questioned collaterally.**—When a municipal body has assumed under color of authority, and exercised, for any con-

[132] Board &c. v. Shields, 62 Mo. 247.

[133] Geneva v. Cole, 61 Ill. 397.

[134] State v. Leatherman, 38 Ark. 81; People v. Maynard, 15 Mich. 463; 1 Dillon Munic. Corp., § 43a.

[135] Cooley Const. Lim. (6th ed.) 310.

[136] People v. Farnham, 35 Ill. 562; Jameson v. People, 16 Ill. 257; State v. Young, 3 Kan. 445; and cases cited in preceding section.

[137] Rains v. Oshkosh, 14 Wis. 403.

[138] State v. Town of Tipton, 109 Ind. 73; s. c. 9 N. E. 704. And in the same case the information was also held bad on demurrer, because it did not show that the plaintiff did not vote in favor of adopting the city charter, or otherwise concur in the proceedings of which he complains. And it was further decided that the averment that a majority of the legal voters did not vote in its favor was not equivalent to an averment that a majority of the votes cast were not favorable: State v. Town of Tipton, 109 Ind. 73; s. c. 9 N. E. 704.

siderable time, with the consent of the state, the powers of a public corporation, of a kind recognized by the organic law, neither the corporation nor any private party can, in private litigation, question the legality of its existence.[139] The state being the creator of municipal corporations, it is the proper party to impeach the validity of their creation; and where it acquiesces in the validity there can be no collateral attack.[140]

§ 60. The charter of a municipal corporation is a law.—The power of the legislature over the charters of municipal corporations finds its origin in the fact that the acts, whether general or special, creating such corporations, are statutes binding upon the persons affected thereby; and are not contracts as are the charters of private corporations. Being public statutes or laws they can be amended or repealed at the pleasure of the legislature, provided no contractual rights are injured. Unlike the decision of a court, the act of the legislature of this year can not bind the legislature of next year. Each represents a sovereignty, the people, and possesses the same

[139] Speer v. Board &c., 60 U. S. App. 38; s. c. 88 Fed. 749; National L. Ins. Co. v. Board &c., 27 U. S. App. 244; s. c. 62 Fed. 778; Ashley v. Board &c., 16 U. S. App. 656; s. c. 60 Fed. 55; People v. Maynard, 15 Mich. 463; School Dist. &c. v. State, 29 Kan. 57; Board &c. v. Shields, 62 Mo. 247; State v. Carroll, 38 Conn. 449; State v. Rich, 20 Mo. 393; Clement v. Everest, 29 Mich. 19; Donough v. Dewey, 82 Mich. 309; s. c. 46 N. W. 782; Carleton v. People, 10 Mich. 250; Clark v. Commonwealth, 29 Pa. St. 129; Commonwealth v. McCombs, 56 Pa. St. 436; Cleveland &c. R. Co. v. Dunn, 61 Ill. App. 227; Rellstab v. Borough of Belmar, 58 N. J. L. 489; s. c. 34 Atl. 885; Eustis v. City of Henrietta (Tex. Civ. App.), 37 S. W. 632.

[140] Shapleigh v. City of San Angelo, 167 U. S. 646; s. c. 17 S. Ct. 957; Graham v. City of Greenville, 67 Tex. 62; s. c. 2 S. W. 742. The constitutionality of the act under which a municipal corporation is created, and the legality of the organization, can not be attacked collaterally: Chicago &c. R. Co. v. Town of Kentwood, 49 La. An. 931; s. c. 22 So. 192. Quo warranto and not injunction is the appropriate remedy for testing the legality of a corporation: Osborn v. Village of Oakland, 49 Neb. 340; s. c. 68 N. W. 506. In a suit against a railroad for killing stock in the city limits the court can not determine the legality of annexing territory: Cleveland &c. R. Co. v. Dunn, 63 Ill. App. 531; or in an action to restrain the collection of a tax: Kuhn v. City of Port Townsend, 12 Wash. 605; s. c. 41 Pac. 923; 50 Am. St. 911; 29 L. R. A. 445; or in an action against a property owner to recover taxes: McCrary v. City of Commanche (Tex. Civ. App.), 34 S. W. 679. A corporation organized under a void act may be rendered valid by a curative act: State v. Berry, 13 Wash. 708; s. c. 42 Pac. 622. A corporation defectively organized may be legalized by the legislature, and its acts rendered valid, where there are no vested rights intervening: State v. McGovern, 100 Wis. 666; s. c. 76 N. W. 593.

powers, and the same right to exercise its discretion. An illustration of this is that a proposed law is often adopted by one legislature which has been rejected by its predecessors for several years. Unless, therefore, an act of legislature assume the form of a contract, it can not be irrevocable. Otherwise, if a permanent charter could be given by legislation, the most injurious consequences would result. Its policy on great interests, once crystallized into a law, would be fixed and unchangeable. This would retard, perhaps materially injure, the general prosperity. Consequently every legislative body, unless restricted by the constitution, may modify or abolish the acts of its predecessors.[141] In fact the constitution, as Judge Cooley points out in his treatise on Constitutional Limitations,[142] in conferring the legislative authority, has prescribed to its exercise certain limitations. These limitations were such as the people chose to impose, and no other power but that of the people can superadd other limitations. "To say that the legislature may pass irrepealable laws is to say that it may alter the very constitution from which it derives its authority; since, in so far as one legislature could bind a subsequent one by its enactments, it could in the same degree reduce the legislative power of its successors."[143]

§ 61. **The American township.**—Every state in the Union is as to its internal affairs essentially independent of every other. We might, therefore, expect to see such individuality in the municipal corporations erected by the several states as characterized the English local bodies of the seventeenth century. But practically there are three distinct kinds or types of township organizations, which we can call the Pennsylvania, the New York and the Minnesota types. The first, since practically adopted by Ohio, Indiana, Iowa, Kansas and Missouri, has this general structure: it gives the people local self-government; the townships are the state agencies; the officers are the local administrative body; each township has the power of self-taxation, and usually controls the public schools. But there is no right of representation on the county board, nor is there anything corresponding to the town meeting—or folkmote, as it has been called. The county authority is superior to and controls the township, and the inhabitants have no voice except such as is expressed in electing officers at the polls. The New York plan, followed in Michigan,

[141] Bloomer v. Stolley, 5 McLean 158.

[142] Cooley Const. Lim. (5th ed.), ch. 5, p. 149.

[143] Upon "Altering Charter," see annotations to case of United States v. Port of Mobile, 12 Fed. 768, 772, by Robert Desty; "Legislative Control of Municipal Corporations," by W. P. Wade, 8 Cent. L. J. 3.

Illinois, Wisconsin and Nebraska, gives freest expression to the "spirit of localism." Each township is constituted on a general model —it has a definite symmetrical organism; there is a town-meeting, which has powers sufficient to deal with all local requirements and emergencies; there is subordination, as in the former instance, to the county organization, but the supervisors of the township have seats in the county board, and so the township has fair representation. The Minnesota plan is less perfect; there is no representation on the county board; but the powers possessed are greater than under the Pennsylvania plan, for there is a town-meeting, endued with authority to choose officers and enact by-laws and local ordinances. The New York plan has, it appears, many points of superiority as compared with either of the others. As has been said, it prevails in the Northwest, and may possibly and might well be adopted more widely.

§ 62. **Local self-government a delegation of legislative power.**—When municipalities are erected under general or special laws, they are vested with the right of local self-government, carrying with it, expressly or by implication, the right to pass by-laws and ordinances; that is, to legislate for local purposes. But it is one of the settled constitutional axioms that the power vested in the legislature to enact laws can not be by that body delegated to any other body or individual. Locke, in his Essay on Civil Government, has the following impressive passage: "These are the bounds which the trust that is put in them by the society, and the law of God and nature, have set to the legislative power of every commonwealth, in all forms of government. First. They are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plough. Secondly. These laws also ought to be designed for no other end ultimately but the good of the people. Thirdly. They must not raise taxes on the property of the people without the consent of the people, given by themselves or their deputies. * * * Fourthly. The legislature neither must nor can transfer the power of making laws to any body else, or place it anywhere but where the people have."

§ 63. **The same subject continued.**—We have then a seeming conflict—the fact that municipalities have a sort of legislative power which they habitually exercise, as opposed to the principle that legislative power can not be delegated.[144] In the first place we ob-

[144] People v. Fleming, 10 Colo. 553; State v. Hudson County Com'rs, 37

serve that the conferring of powers upon municipalities to pass ordinances is not a delegation of power;[145] and, in the second place the bestowal of these subordinate powers of legislation does not trench on the maxim that legislative power must not be delegated, "since that maxim is to be understood in the light of the immemorial practice of this country and of England, which has always recognized the propriety and policy of vesting in the municipal organizations certain powers of local regulation, in respect to which the parties immediately interested may fairly be supposed more competent to judge of their needs than any central authority. As municipal organizations are mere auxiliaries of the state government in the important business of municipal rule, the legislature may create them at will from its own views of propriety or necessity, and without consulting the parties interested; and it also possesses the like power to abolish them without stopping to inquire what may be the desire of the corporators on that subject."[146]

§ **64. Corporations de facto.**—As in the case of private corporations, so also in the case of municipal corporations, there may be a corporation de facto. When a municipal body has assumed under color of authority, and exercised for a considerable period of time, with the consent of the state, the powers of a public corporation, of the kind recognized by the organic law, neither the corporation nor any private party can, in private litigation, question the legality of its existence.[147] There must be two things existing to constitute a corporation of this character: (1) a law under which the corporation might be created, and (2) a bona fide attempt to organize under the law. A municipality organized under a law afterwards held unconstitutional is a de facto corporation, and its officers are de facto officers until

N. J. L. 12; State v. Weir, 33 Iowa 134; Parker v. Commonwealth, 6 Pa. St. 507; Rice v. Foster, 4 Harr. (Del.) 479; People v. Stout, 23 Barb. (N. Y.) 349.

[145] State v. Francis, 95 Mo. 44; s. c. 8 S. W. 1.

[146] Cooley Const. Lim. (5th ed.) 140; citing President &c. v. Society &c., 24 N. J. L. 385; Cheaney v. Hooser, 9 B. Mon. (Ky.) 330; Berlin v. Gorham, 34 N. H. 266.

[147] Speer v. Board &c., 88 Fed. 749. Cf. National Life Ins. Co. v. Board &c., 27 U. S. App. 244; s. c. 62 Fed. 778; 10 C. C. A. 637; Ashley v. Board &c., 16 U. S. App. 656; s. c. 60 Fed. 55; 8 C. C. A. 455; People v. Maynard, 15 Mich. 463; School Dist. &c. v. State, 29 Kan. 57; Board &c. v. Shields, 62 Mo. 247; State v. Carroll, 38 Conn. 449; Clement v. Everest, 29 Mich. 19; Donough v. Dewey, 82 Mich. 309; s. c. 46 N. W. 782; Carleton v. People, 10 Mich. 250; Clark v. Commonwealth, 29 Pa. St. 129; Commonwealth v. McCombs, 56 Pa. St. 436; Guthrie Nat. Bank v. City of Guthrie, 173 U. S. 528; s. c. 19 S. Ct. 513.

a writ of ouster and removal has been issued.[148] It is sometimes contended that there can be no de facto corporation under an unconstitutional law. The acts of a de facto corporation or officer under an unconstitutional law, before its invalidity is challenged or declared by the judicial department of the government, can not be avoided, as against the interests of the public or third parties who have acted or invested in good faith in reliance upon their validity, by any ex post facto declaration or decision that the law under which they acted was void.[149] But where there is no law authorizing a de jure corporation there can be no de facto corporation.[150] It must be understood of course that it will be treated as a de facto corporation until the law has been declared unconstitutional. And so an officer acting under an unconstitutional law is acting under color of law and is an officer de facto.[151]

§ **65. Effect of incorporation.**—The incorporation of a town as a city does not destroy its identity, and property held in trust for the former will be held in trust for the latter without a decree of court vesting it in the latter.[152] And where a municipal corporation is organized it has jurisdiction over all valuable improvements within the

[148] Attorney-General v. Town of Dover, 62 N. J. L. 138; s. c. 41 Atl. 98.

[149] Speer v. Board &c., 88 Fed. 749; Ashley v. Board &c., 16 U. S. App. 656; s. c. 60 Fed. 55; 8 C. C. A. 455; People v. Maynard, 15 Mich. 463; State v. City of Des Moines, 96 Iowa 521; s. c. 65 N. W. 818; 59 Am. St. 381; 31 L. R. A. 186; State v. Rich, 20 Mo. 393; Board &c. v. Shields, 62 Mo. 247.

[150] Speer v. Board &c., 88 Fed. 749. Cf. Norton v. Shelby Co., 118 U. S. 425; s. c. 16 S. Ct. 1121; School Dist. &c. v. State, 29 Kan. 57; People v. Maynard, 15 Mich. 463; State v. City of Des Moines, 96 Iowa 521; s. c. 65 N. W. 818; 59 Am. St. 381; 31 L. R. A. 186; State v. Rich, 20 Mo. 393; Board &c. v. Shields, 62 Mo. 247.

[151] Taylor v. Skrine, 3 Brev. (S. C.) 516; Cocke v. Halsey, 16 Pet. 71; People v. White, 24 Wend. (N. Y.) 520; Carleton v. People, 10 Mich. 250; Clark v. Commonwealth, 29 Pa. St. 129; Commonwealth v. McCombs, 56 Pa. St. 436; City of Guthrie v. Wylie, 6 Okla. 61; s. c. 55 Pac. 103. Because a general statute for the formation of boroughs is held unconstitutional in a proceeding to test the de jure existence of one corporation under such statute, it does not affect the de facto existence of another corporation under the same act: Coast Co. v. Borough of Spring Lake, 56 N. J. Eq. 615; s. c. 36 Atl. 21. A city organized before the passage of the organic act of May 2, 1890, did not become a corporation de jure or de facto: City of Guthrie v. Wylie, 6 Okla. 61; s. c. 55 Pac. 103. Facts alleged held sufficient to establish a de facto corporation, in Gilkey v. Town of How, 105 Wis. 41; s. c. 81 N. W. 120.

[152] Higginson v. Turner, 171 Mass. 586; s. c. 37 N. E. 172.

corporate limits made by the county prior to the incorporation.[153] Corporations legally effected do not become responsible for debts of voluntary associations previously existing.[154] While the repeal of a charter abolishes the old corporation, where, however, substantially the same inhabitants are erected into a new corporation, either with extended or restricted limits, the new corporation is treated in law as the successor of the old and is entitled to its property rights and subject to its liabilities.[155]

[153] Where the owner of land subdivided it and dedicated the streets to the public and constructed private sewers in the streets, independent of and in no way connected with the village sewers, and subsequently the village is incorporated as a city, and the city constructed a main sewer through the subdivision which rendered of no value the private sewers, the city is liable for their value, plaintiff having only parted with an easement: Wright v. City of Mt. Vernon, 60 N. Y. S. 1017; s. c. 44 App. Div. (N. Y.) 574; Almand v. Atlanta &c. R. Co., 108 Ga. 417; s. c. 34 S. E. 6.

[154] City of Guthrie v. T. W. Harvey Lumber Co., 9 Okla. 464; s. c. 60 Pac. 247. A statute making new corporation liable for debts of the old—incorporation is constitutional: White v. City of Quanah (Tex. Civ. App.), 27 S. W. 839.

[155] Shapleigh v. City of San Angelo, 167 U. S. 646, 653; s. c. 17 S. Ct. 957; Mount Pleasant v. Beckwith, 100 U. S. 514, 520; Mobile v. Watson, 116 U. S. 289; s. c. 6 S. Ct. 398. Where the new corporation succeeds to all rights and is subject to all the obligations of the old corporation, it may proceed to assess benefits and appraise damages occasioned by change in the grade by the old corporation, no action having been taken by the latter: Gilpin v. City of Ansonia, 68 Conn. 72; s. c. 35 Atl. 777.

CHAPTER III.

THE CHARTER.

SECTION
66. Early charters.
67. Political element in charters.
68. Charters at the present day.
69. Municipal charters not within the rule of the Dartmouth College case.
70. The present English statutes.
71. The municipal corporation acts and the royal prerogative.
72. Contents of charter.
73. Prominent features of special charters.
74. What charters can not confer.
75. Wherein the constitutional limitation consists.
76. Acceptance—When necessary.
77. The same subject continued.
78. Compulsory acceptance.
79. Charters, how proved.
80. Proof of fact of incorporation.
81. Proof of corporate existence.
82. General rules of construction of charters.
83. Can charters be modified?
84. How far the state can enforce performance of local duties.
85. Change in municipal boundaries.
86. Effect of amendments of charter on city ordinances.
87. Reorganization under general law—Effect of.
88. Reorganization must be strictly according to statute.
89. The same subject continued.
90. Effect of adoption of a new constitution.
91. How far special legislation is permissible.
92. Written constitutions — Operation of.
93. Power to make by-laws—How limited.
94. Conflict of by-laws and general acts.
95. The ordinance, when passed, must be reasonable.
96. Reasonableness — How determined.

§ 66. **Early charters.**—The word "charter" is derived from the Latin word "charta," which signified first a leaf of the Egyptian papyrus, through the Greek ὁ κάρτης, and then any material to write upon, and subsequently any instrument or writing under seal. Charta regia or a royal charter, was an instrument in writing conferring a grant from the crown on any person or persons, or any body politic, of any rights, liberties, franchises or privileges.[1] The early charters were called "muniments," as they "fortified and defended that which was granted."[2] In a history of Charles V, by Dr. Robertson, the manner

[1] Bracton, fol. 336; The Prince's Case, 8 Co. 1.

[2] "Chartæ sont appelle 'muniments' a muniendo, quia muniunt et defendunt hæreditatem:" 4 Co. 153.

in which the early charters were granted is exhaustively examined. The learned author points out that during the existence of the feudal system, and the turbulence and disorder attendant upon it throughout Europe, personal safety was the first great object of every individual. The barons, being the great military lords, were the only ones strong enough to afford protection, and hence the people, for the sake of their protection, would become their vassals, and surrender some rights or a part of their independence in exchange. But when a large number of persons came to be assembled in communities, their number and the fortifications of the place were equally reliable means of defense. So charters were either granted by or wrung from the lords, or drawn up among the individuals of the community, in which they bound themselves under solemn oath to aid in the mutual defense, and the redress of any injury or affront to any individual member. Any one subsequently entering the community had to subject himself to the same oaths and conditions. Little by little local regulations, developing later into a system or code of law, were made and enforced. In addition to the obligation to aid in maintaining the personal security of every member of the community, the charter usually required every member to buy a house or land, or to keep a considerable amount of his personal property within the town, so that he might thus be interested in the common security of property. The community usually was subject to some fixed tax payable to the feudal superior, who was grantor of the charter, and which was accepted by him in lieu of arbitrary imposts and taxes; and the payment of this sum was evenly distributed. So general, in short, was the practical independence of members of such communities that they were called "libertates."

§ 67. **Political element in charters.**—Security of life and then security of property having been acquired, a desire for a higher independence arose. In England, the dominant idea, both of lords and people, being the encouragement of commerce, the custom soon obtained of allowing the merchants to form guilds, with power of making their own regulations. We have already seen the manner in which the privileges of the guilds grew into the privileges of towns. A measure of domestic jurisdiction was given to the more important towns; that is, the towns in which the larger guilds were located. The guild might continue separate and distinct from the town, or it might become merged in and identified with it. But wheresoever there was an identification of the two, a political character was immediately given to the community interests. The object of the members was to acquire greater local independence, and less interference by any outside

and superior powers. And the financial importance of the merchants of England was the means by which they secured many of their rights and privileges. Many charters had been granted and enjoyed before the principle was generally held that the towns so enfranchised were corporations; and many towns were deemed corporations without express words of incorporation having been used. In the reign of Henry VI[3] occurred the first reported instance of allusion to a commonalty as a body corporate. But no charters, it is believed, really incorporated the burgesses or commonalty of any municipal body until the eighteenth year of the same monarch, in which Kingston-upon-Hull was incorporated.[4]

§ 68. **Charters at the present day.**—A charter of incorporation is the evidence of the act of a legislature, governor, court or other authorized department or person, by which a corporation is or was created.[5] A municipal corporation being regarded as a mere agent of government and a depository of political power conferred by the legislature, its charter is not a contract, as is the charter of a private corporation.[6] It is the absence of the contractual element which leaves a municipal corporation at the mercy, so to speak, of the power that created it; for the reason that there is no vested right to the franchises conferred—they are revocable at the will of the creating power.[7] For the same reason the municipal corporation can exercise only such privileges and rights as are expressly granted to it in its instrument of incorporation, or charter, or by some statute amending or extending it.[8] And the creating power, being practically the only party having a voice in giving these privileges, can change, modify or recall any such franchises as the exigencies of the public service or welfare may require. This is now well settled in the decided cases.[9]

[3] Year Book, 7 Henry VI, 43.

[4] There are proofs of earlier charters being granted to this town; one by Edward I, confirmed by Edward II, Edward III, Richard II, Henry IV and Henry V. But actual terms of incorporation were not used prior to the charter of Henry VI.

[5] Anderson Law Dict., tit. Charter. A charter of a municipality is not a contract within the meaning of the constitution: Covington v. Kentucky, 173 U. S. 231; s. c. 19 S. Ct. 383.

[6] Dartmouth College v. Woodward, 4 Wheat. 518, 624, 712.

[7] Philadelphia v. Fox, 64 Pa. 169; Chase Blackstone 189, n.; 1 Dillon Munic. Corp. 54.

[8] Mt. Pleasant v. Beckwith, 100 U. S. 514, 524.

[9] Thomas v. City of Richmond, 12 Wall. 356; Demarest v. New York, 74 N. Y. 161. "A municipal corporation may be viewed in different aspects—that which it has to the citizen, and that which it bears to the state. Seen in the latter relation it is a revocable agency, constituted for the purpose of carrying out in detail such objects of the government as may be properly in-

§ 69. Municipal charters not within the rule of the Dartmouth College case.—The prohibition in the federal constitution against the passage of state laws impairing the obligations of contracts, and the rule in the Dartmouth College case applying this prohibition to statutes amending or repealing the charters of private corporations, have no application to public and municipal charters.[10] But while the prohibition does not extend to the municipal charter itself, it is applicable to contracts made by the municipality prior to the enactment of the amending or repealing statute; and obligations incurred or rights vested prior thereto are not affected by subsequent legislation.[11] Municipal corporations have vested in them merely a small portion of the public administration, and their charters may be changed at the will of the legislature.[12] As has been said, they are established only for the local government of towns or particular districts. The special powers conferred upon them are not vested rights as against the state, but, being wholly political, exist only during the will of the general legislature.[13] These powers can at any time be abrogated by the legislature, either by a general law operating upon the whole

trusted to a subordinate, having no vested right to any of its forms or franchises, and entirely under the control of the legislature, which may enlarge or circumscribe its territorial limits or functions, may change or modify its various departments, or extinguish it with the breath of arbitrary power:" 1 Hare Amer. Const. Law 628; 15 Am. & Eng. Encyc. Law 976. It is a continuing right not exhausted by one exercise: Reeves v. Anderson, 13 Wash. 17; s. c. 42 Pac. 625. A municipal corporation can be dissolved only by consent of the legislature, or pursuant to its legislation; nonuser for a time is not sufficient: Coin v. Brown, 111 Mich. 657; s. c. 70 N. W. 337. A statute may provide that the grant of municipal powers shall take effect on the adoption of the representative body: De Hart v. Atlantic City, 62 N. J. L.; s. c. 41 Atl. 687.

[10] The distinction between private and public charters in this regard was fully discussed in Dartmouth College v. Woodward, 4 Wheat. 518, and the ratio decidendi of the case in the federal court as against the decision of the New Hampshire court turned upon the private nature of the institution whose character was in question. The sanctity of charters granted to private corporations was freely admitted by the state tribunal in Dartmouth College v. Woodward, 1 N. H. 111. See Beach Priv. Corp., § 17.

[11] People v. O'Brien, 111 N. Y. 1; s. c. 18 N. E. 692; 7 Am. St. 684; "Municipal Debts Not Discharged by Repeal of Charter," annotations by H. H. Ingersoll, 21 Am. L. Reg. (N. S.) 181. Cf. "Relations of Municipal Corporations to the State," an address before the Alleghany County Bar Association by W. S. Pier, in 1886; "Municipal Corporations: Can the Legislature of a State Empower Them to Amend Their Own Charters?" 2 Cent. L. J. 33.

[12] State Bank v. Knoop, 16 How. 369, 380.

[13] Sloan v. State, 8 Blackf. (Ind.) 361.

state, or by a special act altering the powers of the corporation, or they may be repealed by an amendment to the constitution, inconsistent with the provisions in the charter.[14] The reason is distinct; for were this not the case, there would have been numberless petty governments existing within the state, forming part of it, but independent of its control.[15] Political Frankensteins are the dread of all governments. The creation of corporations would rapidly have to determine if, when created, they became equal or superior to the power that created them.[16]

§ 70. **The present English statutes.**—It will be interesting here to give in substance the English statutes regarding the granting of charters. They are included in what have been already referred to as the Municipal Corporation Acts.[17] "§ 210. If on the petition to the queen of the inhabitant householders of any town or towns, or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, her majesty, by the advice of her privy council, thinks fit by charter to create such town, towns or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for her majesty, by the charter, to extend to that municipal borough and the inhabitants thereof so incorporated, the provisions of the Municipal Corporation Acts." "§ 211. (1) Every petition for a charter under this act shall be referred to a committee of the lords of her majesty's privy council" (in this part called the committee of council). "(2) One month at least before the petition is taken into consideration by the committee of council, notice thereof and of the time when it will be so taken into consideration shall be published in the London Gazette, and otherwise in such manner as the committee direct, for the purpose of making it known to all persons interested." The queen, having received such a petition, and the council having examined and approved thereof, if she determines to grant a charter of incorporation, has certain powers regarding the election and officers in the new boroughs. She can fix the number of councilors, and also the number and boundaries of the borough wards, and assign the councilors among the wards. She may also "fix the years, days and times for the retirement of the first aldermen and councilors,—thus giving the crown

[14] Trustees of Public Schools v. Taylor, 30 N. J. Eq. 618; Mayor &c. v. Dechert, 32 Md. 369.

[15] Sloan v. State, 8 Blackf. (Ind.) 361.

[16] See the chapter on Legislative Control, post.

[17] See Rawlinson Municipal Corporation Acts, 8th ed.; also 45 & 46 Vict., ch. 50. See also, ante, §§ 30, 31.

the power of fixing the time of elections."[18] The committee of council, before approving a petition to the queen, may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority. This scheme is not binding if objected to by the inhabitants or a part of them, unless confirmed by parliament, and it must in any wise be submitted for approval to the secretary of state and the local government board.[19] Section 216 of this act further provides that "A charter creating a municipal borough, which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this act, shall after acceptance be deemed to be valid and within the powers of this act, and her majesty's prerogative, and shall not be questioned in any legal proceeding whatever." This section was intended to prevent the necessity, which so frequently arose before the passing of these acts, of having acts of parliament to confirm different charters.[20]

§ 71. **The municipal corporation acts and the royal prerogative.**—Sir Christopher Rawlinson, whose compilation of the municipal corporation acts is a standard English work, calls attention to the section concerning the queen's power to grant charters: "The crown has always possessed the power of creating corporations and conferring franchises (see 1 Kyd on Corporations, 61); but where privileges and powers are to be conferred which are not recognized by the common or statute law an act of parliament is necessary. This act, though it would not at all abridge the common-law prerogative of the crown, nevertheless prevents its granting charters of incorporation with the powers conferred by this act, save with the advice of the privy council, and on petition by 'the inhabitant householders.' The petition to the queen must be by the inhabitant householders. It seems a compound householder is included under the term."[21] Notwithstanding the provision of section 216, quoted above, as to the validity of charters purporting to be granted in pursuance of this act, there is an interesting case regarding the validity of a borough charter granted under 5 and 6 Will. IV, ch. 76, § 141, and 7 Will. IV, and 1 Vict., ch. 78, § 49, both of which sections were repealed by 40 and 41 Vict., ch. 69, but

[18] 40 & 41 Vict., ch. 69; 45 & 46 Vict., ch. 50, § 212; Rutter v. Chapman, 8 M. & W. 1.

[19] 45 & 46 Vict., ch. 50, § 214.

[20] See also, 40 and 41 Vict., ch. 69, § 9; 18 and 19 Vict., ch. 31; 20 and 21 Vict., ch. 10.

[21] See Reg. v. Mayor &c., 11 L. T. (N. S.) 417; s. c. 13 W. R. 90; 41 and 42 Vict., ch. 26, § 14; 42 and 43 Vict., ch. 10.

substantially reproduced in this act. It was the case of Rutter v. Chapman,[22] decided in the court of exchequer chamber, and it related to the charter of Manchester. It appears that a petition, which had been agreed upon at a meeting of the rate-payers of the parliamentary borough of Manchester, convened by public advertisement, and which was in fact attended (and which petition was afterwards signed) by four thousand inhabitant householders of the borough, was presented to her majesty, praying for the grant of a charter of incorporation to the inhabitants of such borough under the provision of the act. Afterwards, and before the day appointed for this petition being taken into consideration by the privy council, a counter petition, signed by six thousand of such inhabitant householders, was presented to her majesty, praying her not to grant such charter. The whole number of inhabitant householders in Manchester was at that time forty-eight thousand. The court of exchequer chamber held as follows: First, that the second petition did not necessarily, in point of law, deprive her majesty of the power to grant such charter upon the first petition; but that whether the first petition was, under all the circumstances, the petition of the inhabitant householders of the borough, so as to authorize the exercise of the powers conferred by the act, was a question of fact for a jury, and that the determination of the privy council to advise the crown to grant the charter upon such petition was not conclusive of its validity. The court further held that the grant of such charter of incorporation is an exercise of the common-law prerogative of the crown, although it also extends to the new corporation the powers of the municipal act,[23] which the crown has power to do only by virtue of the sections of this act. Moreover, the charter may be granted to a part only of the borough, from the whole of which the petition emanated, and is not necessarily to be conferred on the inhabitant householders of the whole borough. The decision went much further into detail than this brief summary. The point first mentioned was upheld by a subsequent decision, to the effect that when the first petition had once given the crown power to act under these sections, such power could not be taken away by anything that happened subsequently.[24]

§ 72. Contents of charter.—In the United States, the charter being an act of the legislature usually, either specially directed to the incorporation of one separate city therein named, or general in its provisions, it is instructive to take up and examine an illustrative example of a special charter. The general laws of the states have

[22] 8 M. & W. 1.

[23] 5 and 6 Will. IV, ch. 76.

[24] Reg. v. Mayor &c., 11 L. T. (N. S.) 417; s. c. 13 W. R. 90.

already been discussed. Selection may be made almost at random among special municipal incorporations, for the general features are the same. The city of Auburn was incorporated by the people of the state of New York, represented in senate and assembly, by an act passed March 21, 1848. The act sets out the territorial outline of the proposed municipality, and declares that it "shall hereafter be known by the name of The City of Auburn, and the inhabitants residing therein shall be a corporation under the name and style of The Mayor and Common Council of the City of Auburn, and as such may sue and be sued, complain and defend, in any court of law or equity in this state." The city is then set off in wards. Then follow provisions as to the election of ward and city officers, and the powers and duties of the "common council" are then enumerated. The powers conferred are the powers of the city relating to its domestic economy, its constabulary and its finances. Subordinate legislative powers are delegated, "such as are necessary to carry into full effect the powers given to said council by this act." The duties of the city officers are next defined, after which the subject of municipal taxes is fully treated. The common council are constituted commissioners of highways to keep the streets and roads in repair. Additional powers are conferred on them with regard to prevention of fires, to establishing school districts, to caring for the poor, to regulations as to pestilence and disease, and numerous subordinate miscellaneous duties. Such in brief is the outline of a special municipal charter.

§ 73. **Prominent features of special charters.**—In the charter just examined, it will be seen that the act is more minute and specific regarding the powers and privileges given than in any other part. It would seem as if local self-government were so great and valuable a right that the people feel that it is to be exercised only upon terms and conditions; and the determination of what these terms and conditions shall in a given instance be is to be left to the wisdom and discretion of the legislature, which bears the relation of mouth and voice to the body of the people. This succinctness in stating what powers are conferred makes it possible to know exactly the limits of the city's jurisdiction; and, in case of the passage of general acts subsequently, the charter is the criterion of inconsistency between the special and the general acts. But under a general law—which may be said to be a species of divisible charter, as many municipalities may at the same time point to it as containing the enumeration of their charter rights—the provisions are much the same; only, general terms are used, such as "any * * * complying with the provisions of this act * * * shall," etc. A royal charter is an instru-

ment in writing setting forth the privileges or an assurance of rights granted by the sovereign to the people.[25] When it establishes a municipal corporation, it prescribes the territorial limits, the form, methods and franchises of the proposed municipality, very much as an act of parliament would. It is, however, addressed by the king to all his subjects, and names the persons to be incorporated, and constitutes them and their successors a body corporate.[26] Whether, then, the incorporation be by means of a formal, special document, such as a charter proper, or by means of a particular enactment of the governing body, or whether it be concealed in a general statute, such as the Municipal Corporations Act, it is equally the criterion of every right and privilege enjoyed. It is the constitution of the municipality. If the power of the common council, or of the city executive, be called in question, the charter, in whatever form it exist, has to be judicially examined and construed. If the right to lease ferry privileges is controverted, the charter is the controlling witness to the existence or lack of the right.

§ 74. **What charters can not confer.**—Judge Hare, in his learned treatise on American Constitutional Law,[27] in discussing charters of incorporation, and particularly whether or not charters confer contractual rights which can not be violated consistently with the constitution, draws a distinction between public and private corporations in this regard, and points out not only that the powers delegated are liable to recall, but that many powers can not, by reason of their very nature, be delegated irrevocably. "Many powers," he argues, "and among them the power to coin money and regulate the value thereof, the police power and that of eminent domain, are not only sovereign, but so essential to the care which the state should have for the lives and fortunes of its citizens that they can not be vested irrevocably in private hands, or exercised save for a public purpose; and any attempt made by the state to alienate its authority in these regards will be merely void, and may be so treated by the courts."[28] The same writer states certain qualifications of this general proposition as follows: "A state may forego the power of taxation, but can not confer it; or, in other words, may covenant not to tax the covenantee, though not that he shall have the right to tax

[25] 3 Amer. & Eng. Encyc. of Law, tit. Charter.

[26] A royal charter may, however, empower another to prescribe the form, appoint the officers and give a proper name to the municipality: Glover Munic. Corp. 24.

[27] Vol. 1, p. 608.

[28] Beer Co. v. Massachusetts, 97 U. S. 32; Thorpe v. Rutland &c. R. Co., 27 Vt. 140; Trustees of Public Schools v. Taylor, 30 N. J. Eq. 618.

other people.[29] So the powers requisite for municipal and local government may be delegated to a natural or artificial person appointed by the state, or chosen by the inhabitants of a town or district, but can not be vested irrevocably in the appointee; and a stipulation to that effect will be nugatory."

§ 75. **Wherein the constitutional limitation consists.**—It appears, therefore, from the preceding section, that the federal constitution, in providing that no state shall pass any law impairing the obligation of contracts, looks to the protection of property rights and not political rights. The latter are vested in the people at large, but can not be vested in communities. The constitution is general, and embraces in its scope every citizen. No absolute political rights, then, can vest in any one individual or collection of individuals, as against the legislature, representing the people at large, or as against any other individual or individuals.[30] If the state, therefore, chooses to organize governmental agencies,—as all public corporations are shown to be under the rule of the Dartmouth College case,[30a]—this agency can be modified or revoked at any time by the state. "This is true of all public corporations," says Judge Hare, in the treatise to which reference has already been made,[31] "and applies with full force to the charters which confer the right of local self-government on towns and boroughs."[32] "One distinctive feature of such an agency is that the legislature creates the body which it employs and authorizes, another that the corporation contracts in its own name, and not on the credit of the citizens individually, or of the state. Hence, when it is dissolved, the entire fabric crumbles, and if another is substituted, it will not necessarily inherit the obligations of its predecessor."[33]

[29] In Trustees of Public Schools v. Taylor, 30 N. J. Eq. 618, 622, the court declared it was impossible for the legislature to clothe a municipality with the power of taxing state property. "Taxation," to quote the language of the master, "is, in its essence, an exercise of sovereign power over an inferior; it is an exaction, payment of which by the inferior is compelled by the superior."

[30] People v. Morris, 13 Wend. (N. Y.) 325, 337.

[30a] Dartmouth College v. Woodward, 4 Wheat. 518.

[31] Hare Amer. Const. Law, § 43.

[32] Sharpless v. Mayor &c., 21 Pa. St. 147, 149; Kirby v. Shaw, 19 Pa. St. 258; City of Erie v. Erie Canal Co., 59 Pa. St. 174; President &c. v. Society &c., 24 N. J. L. 385; Berlin v. Gorham, 34 N. H. 266; Butler v. Pennsylvania, 10 How. 402; Newton v. Commissioners, 100 U. S. 548.

[33] Meriwether v. Garrett, 102 U. S. 472. Further on, the extent to which municipal obligations rest upon the organization that takes the place of one that has been dissolved will be more fully discussed.

§ 76. **Acceptance—When necessary.**—As in the case of private corporations, so also in the case of strictly municipal corporations, such as cities, there must be an acceptance of the charter either express or implied. In this respect they differ from public quasi-corporations. Cities are regarded as corporations created for their own benefit; while inhabitants of a district invested by statute, in invitum, with particular powers, are made corporations without their consent.[34] One feature by which a city is distinguished from a county is in that the powers under a county government are conferred by the legislature irrespective of the will of the inhabitants of the county; whereas the inhabitants of a city must determine whether they will accept the corporate powers offered them to be exercised by the officers of their own selection.[35] In other words, municipal corporations proper are called into existence through the direct solicitation, or by the free consent of the people who compose them. Counties are the legal subdivisions of the state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them.[36] An act incorporating a municipality takes effect without acceptance, as an act; and yet without organization thereunder it would be a dead letter.[37] The legislature may provide that any particular charter shall not take effect until accepted; and it can prescribe the way in which the acceptance shall be signified; as that it must be by a majority vote of the inhabitants. And if such provision is not unconstitutional, as has been repeatedly held,[38] there is no tenable ground to take against its going further, and prescribing the manner in which such majority vote shall be ascertained. Thus, in the Ohio case just cited, the township and city occupying identical territorial limits, and the legislature having provided that an amendment to the city charter should be accepted by a majority of the voters of the city, the vote was proceeded to, but the council ordered the vote to be taken at the township polls; and this was held not to be a city vote, and not an acceptance within the provisions of the act, for the voters of the city and township had to possess different qualifications.

[34] Town of Waltham v. Kemper, 55 Ill. 346; Kinnare v. City of Chicago, 171 Ill. 332; s. c. 49 N. E. 536.

[35] Kahn v. Sutro, 114 Cal. 316; s. c. 46 Pac. 87; 33 L. R. A. 620.

[36] Board &c. v. Mighels, 7 Ohio St. 109.

[37] State v. Haines, 35 Or. 379; s. c. 58 Pac. 39.

[38] Smith v. McCarthy, 56 Pa. St. 359; Commonwealth v. Painter, 10 Barr (Pa.) 214; Commonwealth v. Quarter Sessions, 8 Barr (Pa.) 391; President &c. v. Society &c., 24 N. J. L. 385; People v. Salomon, 51 Ill. 37; Foote v. City of Cincinnati, 11 Ohio 408.

§ 77. **The same subject continued.**—A royal charter was never operative until the acceptance of those to be incorporated was signified. The proposed body of incorporators were supposed to receive and consider the charter, and then to accept or reject it. If they accepted it, their acceptance was irrevocable; but the acceptance had to be of the whole charter, or it was deemed to be rejected; and if the crown assented to the proposed alterations, then the amended charter was offered again as a new charter. And in the case of the creation of a corporation by the legislature, the acceptance of the charter, or indeed, whether there need be any acceptance, is wholly for the legislature to say. It was at first thought unconstitutional for the legislature to provide that a charter shall not take effect until accepted by a majority of the inhabitants, on the ground that it is a delegation of legislative power. The courts have, however, interpreted it otherwise, holding such a provision to be wholly constitutional. It is not a delegation of legislative power, but merely the declaration by the legislature of a condition precedent to incorporation; to wit, the vote of a certain proportion of the inhabitants.[39] By the same reasoning, the legislature can make the right to make certain improvements or incur certain liabilities depend upon a vote of the people interested.[40] And the power of the police regulation, one of the most essential attributes of sovereignty, may be committed to the majority of the citizens in separate communities.[41] The right of the legisla-

[39] Lafayette &c. R. Co. v. Geiger, 34 Ind. 185; Hobart v. Supervisors, 17 Cal. 23; Call v. Chadbourne, 46 Maine 206; Bank v. Brown, 26 N. Y. 467; People v. Salomon, 51 Ill. 37; Alcorn v. Hamer, 38 Miss. 652; President &c. v. Society &c., 24 N. J. L. 385; People v. Reynolds, 10 Ill. 1; State v. Noyes, 30 N. H. 279; Sedgwick Constr. of Stat. & Const. Law 135, n. A statute submitting to the people of several municipalities the question whether they shall be consolidated is valid: Smith v. McCarthy, 56 Pa. St. 359.

[40] For decisions holding acceptance not to be essential, see People v. Morris, 13 Wend. (N. Y.) 325; People v. President &c., 9 Wend. (N. Y.) 351; Fire Department v. Kip, 10 Wend. (N. Y.) 267; Proprietors &c. v. Horton, 6 Hill (N. Y.) 501; Wood v. President &c., 9 Cow. (N. Y.) 194; Brouwer v. Appleby, 1 Sandf. (N. Y.) 158; People v. Stout, 23 Barb. (N. Y.) 338; State v. Babcock, 25 Neb. 709; s. c. 41 N. W. 654; Berlin v. Gorham, 34 N. H. 266; State v. Canterbury, 28 N. H. 195; Bristol v. New Chester, 3 N. H. 524; Inhabitants &c. v. Inhabitants &c., 21 Maine 58; State v. Curran, 12 Ark. 321; People v. Wren, 5 Ill. 269; Coles v. Madison Co., 1 Ill. 154; Warren v. Mayor &c., 2 Gray (Mass.) 84; Morford v. Unger, 8 Iowa 82; People v. City of Butte, 4 Mont. 174; s. c. 1 Pac. 414.

[41] The "local option" liquor laws are instances in point. These have been declared constitutional in many courts. Said the supreme court of errors of Connecticut:—"The law is perfect and complete as it comes from the hands of the law-making power:" State v. Wilcox, 42 Conn.

ture to organize municipalities regardless of the consent of those to be affected rests on the very theory of our government. That theory is that it is a government by the people, who act through their representatives. They delegate their authority to their agents, who speak and act for them in making laws, and hence they are bound by properly enacted laws promulgated by their agents. They give their consent to these laws by clothing their agents with power and authority to make them, and there is, therefore, no reserved power in the people to consent to or reject laws properly enacted by their lawfully constituted agents.[42]

§ 78. **Compulsory acceptance.**—In no respect is the distinction between private and public corporations, such as counties, more marked than in the fact that no private corporation, or rather body of individuals, can be incorporated compulsorily, while in the case of public corporations the rule is otherwise. The reason is evident; for a private corporation by its incorporation enters into a contract with the legislative power; when it accepts its charter the grant is irrevocable, and the contractual rights can not be impaired or destroyed by any subsequent act of legislation;[43] but when the legislative body determines that the public interest demands that a city or other municipal corporation should be incorporated, it can confer the necessary franchises and impose the necessary duties on the inhabitants of the place. As a matter of fact the prevalence of general laws on the subject of the incorporation of municipalities makes this question of acceptance of less importance, inasmuch as under a general law it is only possible to prescribe under what conditions certain communities can avail themselves of the provisions of the act and become municipalities. Acceptance, then, is implied when a particular community avails itself of the said provisions, and is constituted a municipality.[44]

364; s. c. 19 Am. R. 536; Commonwealth v. Bennett, 108 Mass. 30; Commonwealth v. Dean, 110 Mass. 357; State v. Noyes, 10 Foster (N. H.) 279; State v. Court of Common Pleas, 36 N. J. L. 72; s. c. 13 Am. R. 422.

[42] Angell & Ames Corp., § 79, and cases cited; People v. City of Butte, 4 Mont. 174; s. c. 1 Pac. 414; Medical Inst. v. Patterson, 1 Den. (N. Y.) 61; s. c. 5 Den. (N. Y.) 618; Myers v. Irwin, 2 S. & R. (Pa.) 368; Wells v. Burbank, 17 N. H. 393; Society &c. v. Town of Pawlet, 4 Pet. 480. Under the classification of cities made by Pennsylvania act of May 23, 1874, a city having more than ten thousand population by the last decennial census became ipso facto a city of the third class without accepting or adopting the provisions of the act: Commonwealth v. McGroarty, 6 Kulp (Pa.) 195.

[43] Dartmouth College v. Woodward, 4 Wheat. 518.

[44] A failure to proceed in the manner prescribed invalidates the charter: People v. Gunn, 85 Cal. 238; s. c. 24 Pac. 718.

Supposing that the general law provides that whenever the inhabitants, or a majority thereof, of a community containing at least so many inhabitants, desire to be incorporated as a municipality, they shall express such desire by a petition to a certain authority, and upon such petition an election shall be held to ascertain the wishes of the inhabitants, with similar regulations, after which the community shall be a village or town, or city of the first, second or third class, as the case may be, the incorporation becomes the voluntary act of the incorporators, and is compulsory only in cases where there is dissent on the part of a minority, who are bound by the majority's action.

§ 79. **Charters, how proved.**—The charter of a municipality incorporated by the legislature is matter of public record and knowledge, like any other act of the legislature; consequently the courts will take judicial notice thereof. This is as of course when the charter is declared to be a public statute; but there are a number of cases—for example, in Alabama[45]—holding that, even when the act of incorporation is merely public or general in its nature and purposes, and is not expressly declared to be a public statute, the courts will judicially notice it. But while the charter is judicially noticed by the courts, the laws or ordinances enacted by the municipality are not so noticed unless by the courts of the municipality. This is true both in England and America.[46] Therefore, when any such by-laws or ordinances are to be pleaded they must be pleaded in substance. If the charter or a statute directs the courts judicially to notice such ordinances, the statute prevails over the general rule and the courts are bound by it. How, then, is this charter brought before a court? How is it proved? Courts will take judicial notice of a charter of a municipality whether it be in the form of a general statute or be declared to be general or public in its character or purposes. It being an expression of the supreme will of the state, the courts will presume it to be a matter of universal knowledge within the state; therefore it need not be specially pleaded.[47] But if it prove necessary to establish the fact that a

[45] Albrittin v. Mayor &c., 60 Ala. 486; Perryman v. City of Greenville, 51 Ala. 507, 510; Case v. Mayor &c., 30 Ala. 538; Smoot v. Mayor &c., 24 Ala. 112, 121.

[46] Norris v. Staps, Hob. 211; s. c. Willc. 166, pl. 403; Willc. 172, pl. 423; Willc. 173, pl. 425; Broadnac's Case, 1 Vent. 196; Barber Surgeons v. Pelson, 2 Lev. 252; Goodrich v. Brown, 30 Iowa 291; Garvin v. Wells, 8 Iowa 286; Conboy v. Iowa City, 2 Iowa 90; Cox v. City of St. Louis, 11 Mo. 431; People v. Mayor &c., 7 How. Pr. (N. Y.) 84; Harker v. Mayor &c., 17 Wend. (N. Y.) 199; City of New Orleans v. Boudra, 14 La. An. 303; Trustees v. Lefler, 23 Ill. 90; Mooney v. Kennett, 19 Mo. 551.

[47] Smoot v. Mayor &c., 24 Ala. 112, 121; Case v. Mayor &c., 30 Ala. 538;

municipality was duly incorporated, the charter itself—that is to say, the act or a true copy thereof, certified or otherwise authenticated—is admissible, and such evidence would be primary. In the absence of primary evidence, it is proper to produce secondary or parol evidence.[48]

§ 80. **Proof of fact of incorporation.**—Although the charter of a city may be judicially noticed, yet it may be the case that the corporate existence of a municipality is alleged, while there is no charter for the courts judicially to notice. This would occur in the case of a corporation by prescription. In such case, proof of user of corporate privileges is admissible, and it is competent to show that the town has for many years exercised corporate powers. Or it may be that the legislature has passed an act conferring some additional right or duty on the town, thus giving it, as it were, legislative recognition.[49] The principle is that the public is the party interested in the incorporation of municipalities, and if the public chooses to consider an existing unincorporated municipality as incorporate, and waives its right to refuse its recognition, no one else is in a position to assert that it is not a corporate body. Reputation and user are therefore competent to be proven to establish corporate existence.[50] While there may have been irregularities in the incorporation of a municipality, yet the courts will not favor their interposition long afterward to disprove corporate existence.[51] And in no case can the legal character of a

Perryman v. City of Greenville, 51 Ala. 507; Albrittin v. Mayor &c., 60 Ala. 486.

[48] Proprietors &c. v. Battles, 6 Vt. 395 (a certified copy from the secretary of state was admitted when the original could not be found in the town clerk's office); Blackstone v. White, 41 Pa. St. 330 (a sworn copy—not official—held to be proper secondary evidence); Inhabitants &c. v. Inhabitants &c., 12 Mass. 400 (a case of proof by parol). Courts will not take judicial notice of an act incorporating a city and of the powers granted in the charter: Downs v. Commissioners &c., 2 Pen. (Del.) 132; s. c. 45 Atl. 717.

[49] "It is universally affirmed that when a legislature has full power to create corporations, its act recognizing as valid a de facto corporation, whether private or municipal, operates to cure all defects in steps leading up to the organization, and makes a de jure out of what before was only a de facto corporation:" Brewer, J., in Comanche Co. v. Lewis, 133 U. S. 198, 202; s. c. 10 S. Ct. 286.

[50] Barnes v. Barnes, 6 Vt. 388; Bassett v. Porter, 4 Cush. (Mass.) 487; Dillingham v. Snow, 5 Mass. 547; Ryder v. Railroad Co., 13 Ill. 516, 523; President &c. v. McKean, 10 Johns. (N. Y.) 154; Owings v. Speed, 5 Wheat. 420; Town of Londonderry v. Town of Andover, 28 Vt. 416; Sherwin v. Bugbee, 16 Vt. 439.

[51] Fitch v. Pinckard, 5 Ill. 69, 76; Jameson v. People, 16 Ill. 257; Dunning v. New Albany &c. R. Co., 2 Ind. 437. See also, Smith v. Board &c., 45 Fed. 725.

de facto municipal corporation be collaterally impeached by private citizens: it belongs to the state alone, by the proper officers, to institute proceedings in which the regularity of its incorporation may be determined.[52]

§ 81. **Proof of corporate existence.**—A recent writer has said: "The charter or the act of incorporation of a municipality, like records generally, are [is] to be proved by inspection, or by copies [a copy] properly authenticated; but if there be sufficient proof of the loss or destruction of the record, much inferior evidence of its contents may be admitted."[53] When the inquiry into the corporate existence of a municipality is merely collateral, only that the municipality exists de facto need be proved.[54] The incorporation of a town may be proved by reputation, or by long user of corporate powers, or, as we have previously seen, by grants from the legislature implying a corporate existence.[55] It is not conclusive proof of no previous corporate existence that a town has been incorporated under act of the legislature, for it may have desired to obtain the rights and privileges given by virtue of some general statute; at the most it would be a question for the jury. So in an action against a village, it was held that a recital in a statute to the effect that the village had been incorporated was proof of such incorporation.[56]

§ 82. **General rules of construction of charters.**—"It is a well-settled rule, in regard to acts of incorporation, that they must be strictly construed, and especially municipal corporations, for the reason that as they are invested with a portion of the authority which properly appertains to the sovereign power of the state, they must be confined to those powers which are clearly granted, as it is only by such grants that the government proper can surrender its just

[52] Mendenhall v. Burton, 42 Kan. 570; s. c. 22 Pac. 558.

[53] 15 Am. & Eng. Encyc. of Law, tit. Municipal Corporations, § 10, p. 965.

[54] Parol proof of incorporation: Robie v. Trustees, 35 Barb. (N. Y.) 319; President &c. v. McKean, 10 Johns. (N. Y.) 154, 159; Dillingham v. Snow, 5 Mass. 547; Bassett v. Porter, 4 Cush. (Mass.) 487; Fitch v. Pinckard, 5 Ill. 76; Jameson v. People, 16 Ill. 257; Barnes v. Barnes, 6 Vt. 388; Proprietors &c. v. Battles, 6 Vt. 395; Sherwin v. Bugbee, 16 Vt. 439; Town of Londonderry v. Town of Andover, 28 Vt. 416; Dunning v. New Albany &c. R. Co., 2 Ind. 437; Owings v. Speed, 5 Wheat. 420. See also, the preceding section.

[55] See Bow v. Allenstown, 34 N. H. 351; New Boston v. Dunbarton, 15 N. H. 201.

[56] Fox v. Village of Fort Edward, 48 Hun (N. Y.) 363; s. c. 1 N. Y. S. 81. See, as to manner of proving organization under a general act, Louisville &c. R. Co. v. Shires, 108 Ill. 617.

authority."[57] But where the inquiry is merely as to whether there is a corporation, the foregoing rule does not apply, and every intendment must be taken in favor of the sufficiency of the legislative action.[58] And where the extent of the powers conferred has been ascertained by the cardinal rule of interpretation, the exercise of authority within the recognized limits is favored by the courts.[59] The charter of a city in Michigan empowered the common council to "issue new bonds for the refunding of bonds and evidences of indebtedness already issued;" and in deciding that a judgment against the city was within the language quoted Judge Cooley said: "When a power is conferred which in its exercise concerns only the municipality and can wrong or injure no one, there is not the slightest reason for any strict or literal interpretation with a view to narrowing its construction."[60] That is good sense, and it is the application of correct principles in municipal affairs. The whole instrument, all preceding charters, the general legislation of the state, and the object of the legislature in the erection of municipalities, should be consulted in construing particular provisions of charters.[61]

[57] Leonard v. City of Canton, 35 Miss. 189, 190; Minturn v. Larue, 23 How. 435; City of Lafayette v. Cox, 5 Ind. 38; President &c. v. Mayor &c., 7 Ohio (pt. 2) 31; Thomas v. City of Richmond, 12 Wall. 349; Willard v. Killingworth, 8 Conn. 247; Port Huron v. McCall, 46 Mich. 565, 574; s. c. 10 N. W. 23; Nichol v. Mayor &c., 9 Humph. (Tenn.) 252; Henderson v. City of Covington, 14 Bush (Ky.) 312; Sedgwick Constr. of Stat. & Const. Law 338; 1 Dillon Munic. Corp., § 91; 15 Am. & Eng. Encyc. of Law 1041.

[58] State v. Young, 3 Kan. 445.

[59] Kyle v. Malin, 8 Ind. 34. "The strictness to be observed in giving construction to municipal charters should be such as to carry into effect every power clearly intended to be conferred on the municipality and every power necessarily implied in order to the complete exercise of the powers granted:" Smith v. City of Madison, 7 Ind. 86, 87.

[60] Port Huron v. McCall, 46 Mich. 565, 574; s. c. 10 N. W. 23.

[61] 1 Dillon Munic. Corp., § 87; Thomason v. Ashworth, 73 Cal. 73; s. c. 14 Pac. 615; Chicago Dock &c. Co. v. Garrity, 115 Ill. 155; s. c. 3 N. E. 448; Holland v. Mayor &c., 11 Md. 186; Moran v. Long Island City, 101 N. Y. 439; s. c. 5 N. E. 80; Babcock v. City of Helena, 34 Ark. 499. Construction of charter of Greater New York in relation to board of assessors: People v. Feitner, 156 N. Y. 694; s. c. 51 N. E. 1093. Construction of charter of Greater New York in relation to abolishing Richmond Hill and effect upon officers: Fire Department &c. v. Davies, 25 Misc. (N. Y.) 683; s. c. 54 N. Y. S. 1077. Construction of charter of Greater New York in relation to officials in justices' courts: People v. Van Wart, 25 Misc. (N. Y.) 215; s. c. 55 N. Y. S. 68; McKenna v. City of New York, 34 App. Div. (N. Y.) 152; s. c. 54 N. Y. S. 634. Charter of Kansas City, Mo., is constitutional: City of Kansas City v. Bacon (In re North Terrace Park), 147 Mo. 259; s. c. 48 S. W. 860. Construction of charter of the city of Kansas City in relation to eminent domain: City of

§ 83. **Can charters be modified?**—All public corporations created for municipal purposes may be controlled, and have their charters amended and altered, at the pleasure of the legislature.[62] Still, it is conceivable that the legislature may in incorporating a municipality make a grant in the nature of a contract with the municipality, which contract it can neither impair nor resume.[63] And moreover, the power of the legislature to change existing charters at pleasure is modified by the constitution of the United States. For example, no state can so legislate as to prevent an existing municipality from performing any contract it may have entered into, for the reason that no state can pass a law impairing the obligation of contracts.[64] Mr. Justice Clifford, in discussing the relations of the legislature to municipalities which it has created, said:[65] "Corporations of a municipal character, such as towns, are usually organized in this country by special acts or pursuant to some general state law; and it is clear that their powers and duties differ in some important particulars from the towns which existed in the parent country before the Revolution, when they were created by special charters from the crown, and acquired many of their privileges by prescription, without any aid from parliament. Corporate franchises of the kind granted during that period partook much more largely of the nature of private corporations than do the municipalities created in this country, and known as towns, cities and villages.[66] Power exists here in the legislature, not only to fix the boundaries of such a municipality when incorporated, but to enlarge or diminish the same subsequently, without the consent of the residents, by annexation or set-off, unless restrained by the constitution, even against the remonstrance of every property holder and voter within the limits of the original municipality."[67] Neither a charter of a municipal

Kansas City v. Marsh Oil Co., 140 Mo. 458; s. c. 41 S. W. 943.

[62] State v. Mayor &c., R. M. Charl. (Ga.) 250. And amendatory acts are not local or private within the meaning of constitutional provisions requiring such laws to embrace only one subject, and that to be expressed in the title: Thompson v. City of Milwaukee, 69 Wis. 492; s. c. 34 N. W. 402. See also, Sheridan v. City of Salem, 14 Or. 328; s. c. 12 Pac. 925.

[63] Richland Co. v. Lawrence Co., 12 Ill. 1.

[64] Mount Pleasant v. Beckwith, 100 U. S. 514, 532; Von Hoffman v. City of Quincy, 4 Wall. 535, 554. See Lee Co. v. Rogers, 7 Wall. 181, 184; Butz v. City of Muscatine, 8 Wall. 575, 583; Furman v. Nichol, 8 Wall. 44, 62; Dillon Munic. Corp., § 69; State v. City of Milwaukee, 25 Wis. 122; Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234.

[65] Mount Pleasant v. Beckwith, 100 U. S. 514, 531.

[66] The dissimilarities are well set forth by Chief Justice Perley, in Eastman v. Meredith, 36 N. H. 284.

[67] See further, as to repeal or

corporation nor any statute regulating the use of property held by the municipality for governmental or public purposes is a contract within the meaning of the federal constitution.[68]

§ 84. How far the state can enforce performance of local duties.— Where the legislative control is confined simply to municipal corporations as agencies of the state in its government, then this legislative control is ample,[69] because in all matters of general concern there is no local right to act independently of the state. The local authorities of a city have no right, and can not be permitted, to determine for themselves whether, for example, they will contribute through taxation to the support of the state government, or assist, when called upon by the state, to suppress insurrection, or aid in the enforcement of the police laws. Upon all subjects the state may exercise compulsory authority and may enforce the performance of local duties.[70] But at the same time the fact remains and must not be lost sight of, that municipal corporations have objects and purposes peculiarly local, in which the state at large has legally no concern whatever, and in which it is not its function to intermeddle, except in so far as it confers the powers and can regulate their exercise.[71]

change of charter, Town of East Hartford v. Hartford Bridge Co., 10 How. 551; Piqua Branch &c. v. Knoop, 16 How. 369; Girard v. Philadelphia, 7 Wall. 1; State v. Mayor &c., 24 Ala. 701; City of Little Rock v. Parish, 36 Ark. 166; State v. Jennings, 27 Ark. 419; Crook v. People, 106 Ill. 237; State v. Troth, 34 N. J. L. 377, 379; State v. Branin, 23 N. J. L. 484; Mayor &c. v. Jersey City R. Co., 20 N. J. Eq. 360; Philadelphia v. Fox, 64 Pa. St. 169; City of Reading v. Keppleman, 61 Pa. St. 233; Buckner v. Gordon, 81 Ky. 665; Boyd v. Chambers, 78 Ky. 140; In re Hinkle, 31 Kan. 712; s. c. 3 Pac. 531; Demarest v. Mayor &c., 74 N. Y. 161; Gray v. City of Brooklyn, 2 Abb. App. Dec. (N. Y.) 267; People v. Morris, 13 Wend. (N. Y.) 325; Berlin v. Gorham, 34 N. H. 266; Cobb v. Kingman, 15 Mass. 197; Smith v. Village of Adrian, 1 Mich. 495; Roberts Case, 51 Mich. 548; s. c. 17 N. W. 50; Inhabitants &c. v. North Yarmouth, 34 Maine 411; Inhabitants &c. v. Skillings, 45 Maine 133; Carpenter v. People, 8 Colo. 116; s. c. 5 Pac. 828; Clinton v. Cedar Rapids &c. R. Co., 24 Iowa 455; State v. Mayor &c., R. M. Charl. (Ga.) 250; Mayor v. Steamboat Co., R. M. Charl. (Ga.) 342; People v. Burr, 13 Cal. 343; City of San Francisco v. Canavan, 42 Cal. 541; Town of Marietta v. Fearing, 4 Ohio St. 427; Scovill v. Cleveland, 1 Ohio St. 126; Lynch v. Lafland, 4 Coldw. (Tenn.) 96; Daniel v. Mayor &c., 11 Humph. (Tenn.) 582; Guild v. City of Chicago, 82 Ill. 472; Kennedy v. City of Sacramento, 19 Fed. 580.

[68] Covington v. Kentucky, 173 U. S. 231; s. c. 19 S. Ct. 383; New Orleans v. New Orleans &c. Co., 142 U. S. 79; s. c. 12 S. Ct. 142.

[69] People v. Hurlbut, 24 Mich. 44.

[70] People v. Council &c., 28 Mich. 236, by Cooley, J., who treats the subject in an exhaustive essay with characteristic clearness and learning.

[71] Cf. "Power of the Legislature to Compel Levy of Tax by Municipal

§ 85 **Change in municipal boundaries.**—The right to increase or diminish the area of a municipality must be given by the legislature —the same power which is competent to amend the charter; for any change in the boundaries of a municipality—whether the territory be enlarged or diminished, or whether a division of territory be made, or any change whatsoever be effected in boundaries or otherwise—must necessarily contract or enlarge the sphere of the municipal jurisdiction; and therefore it constitutes pro tanto an amendment of an existing charter. The power is thus clearly legislative, and it is, in general, incapable of being delegated. In that it is legislative it can not be conferred on the judiciary. The courts can not then determine to what extent a city can acquire additional territory, or whether it can or can not acquire it, except in so far as such questions may arise in construing and interpreting the city charter. The legislature may, however, delegate to the municipal corporation itself power and authority to make changes in its boundaries; because this is not in fact a delegation of legislative power; it is in legal intent only a provision by the legislature that if certain exigencies arise and certain conditions then exist, then, and in that event, the boundaries may be altered or enlarged. No discretion is given; and if the city proceeds to enlarge its boundaries, supposing the conditions to exist when as a matter of fact they do not, the courts will pronounce the action invalid and void.[72]

§ 86. **Effect of amendments of charter on city ordinances.**—It is often necessary to inquire whether the ordinances of a city passed prior to the enactment of certain amendments to the city charter are affected thereby. It is the better view to hold that they are not the less binding on that account. The acquisition of a new charter by a city does not abrogate city ordinances passed under the old charter unless they are clearly inconsistent therewith;[73] nor would the ordinances of a city, or the provisions of its charter,[74] be affected by a general law, unless they were obviously inconsistent. Thus, in Mis-

Corporations," a note by T. Burwell, 11 Am. L. Reg. (N. S.) 80.

[72] City of Galesburg v. Hawkinson, 75 Ill. 152, 156. A city partly situated in two counties has its situs in the county where its municipal offices and government are located: Fox v. City of Fostoria, 60 Ohio St. 340; s. c. 54 N. E. 370.

[73] State v. Natal, 39 La. An. 439; s. c. 1 So. 923.

[74] Under a constitutional provision that city charters must be "consistent with and subject to the constitution and laws of this state," a charter will not be declared invalid in toto because a few of its provisions may conflict with general statutes: Brooks v. Fischer, 79 Cal. 173; s. c. 21 Pac. 652; 4 L. R. A. 429; In re Strand (Cal.), 21 Pac. 654.

souri the court held, in a case where the city charter authorized the mayor and aldermen to remove for cause any person holding an office created by the charter or by ordinance, that it was not inconsistent with, and therefore not repealed by, a general act providing for the removal from office of any officer who did not actually spend his time in performing the duties of his office, or of any official guilty of willful violation or neglect of his official duty.[75]

§ 87. **Reorganization under general law—Effect of.**—When a charter is amended, we have elsewhere seen that it has no effect on ordinances passed prior to the amendment which are not inconsistent with the charter as amended. It is usually held that a mere amendment of a charter has no effect on city officers, so as to determine their tenure of office. But suppose an incorporated municipality reorganizes under a general incorporation act, it is clear that the reorganization must have some effect upon the officers under the old charter. This effect is to abrogate their tenure of office, unless the general law contains some saving clause continuing them in office.[76] "Where a new form is given to an old municipal corporation, or such corporation is reorganized under a new charter, taking in its new organization the place of the old one, embracing substantially the same corporators and the same territory, it will be presumed that the legislature intended a continued existence of the same corporation, although different powers are possessed under the new charter, and different officers administer its affairs; and in the absence of express provision for their payment otherwise, it will be presumed that the legislature intended that the liabilities as well as the rights of property of the corporation in its old form should accompany the corporation in its reorganization."[77] The United States circuit court has held that the reorganization of the city of Pensacola under a general law of the state of Florida was merely, in legal effect, an assumption by the city of the new powers and privileges which the act conferred.[78]

[75] Manker v. Faulhaber, 94 Mo. 430; s. c. 6 S. W. 372.

[76] McGrath v. City of Chicago, 24 Ill. App. 19.

[77] 15 Am. & Eng. Encyc. of Law 972, 973; citing Broughton v. Pensacola, 93 U. S. 266; Rex v. Pasmore, 3 T. R. 199; Reg. v. Bewdley, 1 P. Wms. 207; Mayor &c. v. Brooke, 7 Q. B. 339; Trustees &c. v. City of Erie, 31 Pa. St. 515; Girard v. Philadelphia, 7 Wall. 1; People v. Board &c., 21 Cal. 668; City of Olney v. Harvey, 50 Ill. 453; City of Maysville v. Shultz, 3 Dana (Ky.) 10; State v. Mayor &c., 24 Ala. 701; O'Connor v. City of Memphis, 6 Lea (Tenn.) 730; Hughes v. School Dist., 72 Mo. 643; Tyler v. Elizabethtown &c. R. Co., 9 Bush (Ky.) 510.

[78] Milner v. City of Pensacola, 2 Woods 632; Fowle v. Common Council &c., 3 Pet. 398; First Municipality v. Commissioners of Sinking Fund, 1 Rob. (La.) 279. An election to incorporate under a general

§ 88. **Reorganization must be strictly according to statute.**—The statutes often provide, where a city wishes to be incorporated and application is made to a judge of the county to order an election to be held, that proof must be made upon such application that the territory sought to be incorporated contains the requisite number of inhabitants.[79] Whatever finding the court makes on the proof as presented to him is in such cases conclusive.[80] And when a petition contained the necessary statement of the number of inhabitants, which was supported by an express finding, but the notice of election was deficient in that particular, the court declined to adjudge the subsequent proceedings invalid on account of the mere irregularity.[81] The provisions of the statutes are usually held to be mandatory. For example, the town of Nacogdoches, in Texas, kept up its corporate existence until about the year 1882, having been originally incorporated in 1859. The revised statutes of the state prescribe the manner in which an existing municipal corporation may surrender its corporate existence and reincorporate under the general act. Notwithstanding this, steps were taken in 1887 as for the original incorporation of a city or town. The court held that these proceedings did not operate to create a corporation, nor to dissolve the one existing prior to their institution.[82]

§ 89. **The same subject continued.**—A town in Louisiana was organized under a general law. Subsequently it obtained and reorganized under a special charter. This charter being repealed, it was held to be no longer an incorporated town.[83] The legislature, in providing for the amendment of a municipal charter or for the reorganization of the municipality, may expressly provide that the act shall

law may be ordered while the town is in existence under a special act: Thompson v. State, 23 Tex. Civ. App. 370; s. c. 56 S. W. 603.

[79] For example, Rev. Stat. Tex., art. 508.

[80] State v. Goowin, 69 Tex. 55; s. c. 5 S. W. 678.

[81] Smith v. Board &c., 45 Fed. 725.

[82] State v. Dunson, 71 Texas 65; s. c. 9 S. W. 103. Where a municipal corporation attempts to reincorporate under a statute which does not authorize such reincorporation, but only an original incorporation, the proceedings are without effect, and the original corporate existence remains: Harness v. State, 76 Texas 566; s. c. 13 S. W. 535; 29 Am. & Eng. Corp. Cas. 50. An act permitting certain towns to reincorporate that had attempted to incorporate under a previous void act was construed not as a validating act, but as a grant of a new power, under which a town might reincorporate with a larger territory than was included in the first attempt: In re Campbell, 1 Wash. 287; s. c. 24 Pac. 624.

[83] Burk v. State, 5 Lea (Tenn.) 349.

take effect only upon the assent of the people of the municipality or a given majority thereof.[84] But if such an act be adopted or consented to, acts amendatory thereof do not require additional consenting, unless the amendatory act itself calls for such assent.[85]

§ 90. **Effect of adoption of a new constitution.**—The constitution of 1846 adopted by the state of New York was a constitution not framed for a people entering into a political society for the first time, but for a community already organized, and furnished with legal and political institutions adapted to all or nearly all the purposes of civil government. It was not intended to abolish these institutions, except where they might be repugnant to the new constitution. In its first article it provides that all the acts of the legislature then in force, and not repugnant to it, should continue to be the law of the state, subject to such alterations as the legislature might see fit to make. What effect, then, did the adoption of this general law, this new constitution, have upon existing municipalities and their officials? By the acts of the legislature, thus continued in force, a great number of offices had been created, and among them, and constituting numerically far the largest portion of all the functionaries of the state, were the county, city, town and village offices, by which the local government was carried on. As to these existing offices and their incumbents, it is clear that neither their functions nor rights changed at all in consequence of this new general act.[86] What, then, was its effect? It was to set up a criterion, a standard, by which to determine whether the legislature, in creating, amending or repealing municipal franchises, is acting in contravention of any vested right. But it affected no office or officer not antagonistic to or inconsistent with the provisions thereof.

§ 91. **How far special legislation is permissible.**—It is the business of the legislature to adjust in the interest of the whole people of the state the distribution of the powers of government, taking care that no direct provision of the constitution is violated, and that no arrangement which it has made is incidentally disturbed. Plenary

[84] Mayor &c. v. Finney, 54 Ga. 317; In re Henry St., 123 Pa. St. 346; s. c. 16 Atl. 785; State v. Mayor &c., 73 Mo. 435; City of St. Louis v. Russell, 9 Mo. 507; Largen v. State, 76 Tex. 323; s. c. 13 S. W. 161. An election held in disregard of the registry laws does not effect an incorporation, and a nonresident owner of property within the proposed limits may have an injunction restraining the canvassing of the returns: Smith v. Board &c., 45 Fed. 725.

[85] 15 Am. & Eng. Encyc. of Law 972.

[86] People v. Draper, 15 N. Y. 532, 540.

power in the legislature for all purposes of civil government is the rule. As a political society the state has an interest in the repression of disorder and the maintenance of peace and security in every locality within its limits; and if, from exceptional causes, the public good requires that legislation, either permanent or temporary, be directed toward any particular locality, whether consisting of one county or of several counties, it is within the discretion of the legislature to apply such legislation as in its judgment the exigency of the case may require; and it is the sole judge of the existence of such conditions. The representatives of the whole people, convened in the two branches of the legislature, are, subject to constitutional limitations, the organs of the public will in every district or locality of the state. It follows, therefore, that to the legislature belongs the arranging and distributing of the administrative functions; committing such portions as it may deem suitable to local jurisdictions, and retaining other portions to be exercised by officers appointed by the central power. As to the constitutional limitations, they are not so much limitations of the legislature as of the power of the people themselves, self-imposed by the constitutional compact. So, when a law is declared unconstitutional, it amounts to saying that the sovereign power of the people in that regard has been abdicated by themselves. Otherwise the legislature is untrammeled, and can legislate in cases of local disorder as it will.[87]

§ 92. **Written constitutions—Operation of.**—Limitation upon legislative power is one of the purposes to be effected by a written constitution. Its necessity lies in the fact that, if no limitations existed, the government could have no elements of permanence and durability; and the distribution of its powers and the vesting of their exercise in separate departments would be an idle ceremony. The right of self-government in the local bodies and the power of the people of those communities to select the local officers and conduct the local administration would utterly disappear, or exist only at the pleasure of the legislature. But the theory of the constitution is that the several counties, cities, towns and villages are of right entitled to choose whom they will have to rule over them;[88] and this right can not be taken from them, or the electors and inhabitants be disfranchised, by any act of the legislature, or of any or all the departments

[87] People v. Draper, 15 N. Y. 532-537.

[88] The Roman empire tottered into ruin because all power was centered at Rome. This cardinal defect in its system of administration removed the strongest inducement for its constituent peoples to maintain the status quo.

of the state government combined. Therefore a written constitution must be interpreted, and effect given to it, as the paramount law of the land, equally obligatory upon the legislature as upon other departments of government and individual citizens. Nor must it be literally construed. A written constitution would be of little avail as a practical and useful restraint upon the different departments of government, if a literal reading only were to be given it, to the exclusion of all necessary implication, and the clear intent ignored. Broad, reasonable interpretations must be placed on its provisions in order that it may operate equally and beneficently. The difference between a written and an unwritten constitution, according to Hare,[89] is similar to that which "distinguishes the natural integuments, which yield to the motions of the body and expand with the growth of every limb, from an artificial covering that may become too narrow in the course of time. A country that is bound by fixed rules prescribed by a former generation, which can not be altered without a long and complicated process, may find itself powerless in the face of some unforeseen exigency, and be obliged to violate its organic law as the price of safety."[90]

[89] 1 Hare Amer. Const. Law 214, 215.

[90] Daniel Webster, in his speech on the Independence of the Judiciary (Works, vol. 3), said:—"It can not be denied that one great object of written constitutions is to keep the departments of government as distinct as possible; and for this purpose to impose restraints designed to have that effect. And it is equally true that there is no department on which it is more necessary to impose restraints than upon the legislature. The tendency of things is almost always to augment the power of that department in its relation to the judiciary. The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men." Then he comments upon the legislature, and its liability, if in no wise restrained, to encroach upon the judiciary:—"The constitution being the supreme law, it follows, of course, that every act of the legislature contrary to that law must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the constitution ceases to be a legal, and becomes only a moral, restraint upon the legislature. If they, and they only, are to judge whether their acts be conformable to the constitution, then the constitution is admonitory or advisory only, not legally binding; because if the construction of it rests wholly with them, their discretion in particular cases may be in favor of erroneous and dangerous constructions. Hence, the courts of law necessarily, when the case arises, must decide on the validity of particular acts. Without this check, no certain limitation could exist on the exercise of legislative power."

§ 93. Power to make by-laws—How limited.—"The power of municipal corporations to make by-laws," said Judge Cooley,[91] "is limited in various ways: 1. It is controlled by the constitution of the United States and of the state. The restrictions imposed by those instruments which directly limit the legislative power of the state rest equally upon all the instruments of government created by the state. If a state can not pass an ex post facto law, or law impairing the obligation of contracts, neither can any agency do so which acts under the state with delegated authority.[92] By-laws, therefore, which in their operation would be ex post facto or violate contracts, are not within the power of municipal corporations; and whatever the people by the state constitution have prohibited the state government from doing, it can not do indirectly through the local governments. 2. Municipal by-laws must also be in harmony with the general laws of the state, and with the provisions of the municipal charter. Whenever they come in conflict with either the by-law must give way."[93] It is often the case, however, that the charter contains a provision that the general laws of the state on some particular subject shall not be operative in that particular city, and that the corporation may pass local laws at discretion. But this exclusive privilege, when granted, can be at any time recalled.[94] And this privilege of passing local by-laws, although denied to other cities by a general law, if not inconsistent with the general law is not affected by it, and can stand together with it.

§ 94. Conflict of by-laws and general acts.—"It is said that the by-law of a town or corporation is void if the legislature have regulated

[91] Cooley Const. Lim. 238; "Power of Municipal Corporations to Make By-Laws," 15 Sol. J. & Rep. 209 and 230; "Municipal Ordinances," by Irving Browne, 27 Alb. L. J. 284.

[92] Cooley Const. Lim. 238; citing Stuyvesant v. Mayor, 7 Cow. (N. Y.) 588; Brooklyn &c. R. Co. v. Brooklyn &c. R. Co., 32 Barb. (N. Y.) 358; Illinois Conf. Female College v. Cooper, 25 Ill. 148.

[93] Cooley Const. Lim. 238; citing Wood v. City of Brooklyn, 14 Barb. (N. Y.) 425; Mayor &c. v. Nichols, 4 Hill (N. Y.) 209; Town of Petersburg v. Metzker, 21 Ill. 205; Southport v. Ogden, 23 Conn. 128; Andrews v. Insurance Co., 37 Maine 256; City of Canton v. Nist, 9 Ohio St. 439; Carr v. City of St. Louis, 9 Mo. 191; Commonwealth v. Erie &c. R. Co., 27 Pa. St. 339; City of Burlington v. Kellar, 18 Iowa 59; Conwell v. O'Brien, 11 Ind. 419; March v. Commonwealth, 12 B. Mon. (Ky.) 25. See also, Baldwin v. Green, 10 Mo. 410; Cowen v. Village of West Troy, 43 Barb. (N. Y.) 48; State v. Georgia Medical Society, 38 Ga. 608; Pesterfield v. Vickers, 3 Coldw. (Tenn.) 205; Weith v. City of Wilmington, 68 N. C. 24.

[94] State v. City of Camden, 50 N. J. L. 87; s. c. 11 Atl. 137.

the subject by law. If the legislature have passed a law regulating as to certain things in a city," says Mr. Justice Woodworth,[95] "I apprehend the corporation are not thereby restricted from making further regulations. Cases of this kind have occurred and never been questioned on that ground; it is only to notice a case or two out of many. The legislature have imposed a penalty of one dollar for servile labor on Sunday; the corporation of New York have passed a by-law, imposing the penalty of five dollars for the same offense. As to storing gunpowder in New York, the legislature and corporation have each imposed the same penalty. Suits to recover the penalties have been sustained under the corporation law. It is believed that the ground has never been taken that there was a conflict with the state law." In a case in Mobile, where the validity of a municipal by-law was questioned, which provided a fine of fifty dollars for assault and battery committed within the city limits, the court held: "The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation, for the enforcement of good order and quiet within the limits of the corporation. It is altogether immaterial whether the state tribunal has interfered and exercised its powers in bringing the defendant before it to answer for the assault and battery; for whether he has been punished or acquitted is alike unimportant. The offense against the corporation and the state are distinguishable and wholly disconnected, and the prosecution at the suit of each proceeds upon a different hypothesis: the one contemplates the observance of the peace and good order of the city; the other has a more enlarged object in view, the maintenance of the peace and dignity of the state."[96] The power to pass a city ordinance must be vested in the governing body of the city by the legislature in express terms, or be necessarily or fairly implied in and incident to the powers expressly granted, and must be essential to the declared purposes of the corporation,—not simply convenient, but indispensable. Any fair or reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.[97] Powers

[95] Rogers v. Jones, 1 Wend. (N. Y.) 237, 261.

[96] Mayor &c. v. Allaire, 14 Ala. 400. Cf. "Proper Relations of the State to Municipal Institutions," by H. M. White, 5 Tenn. Bar Assn. Rep. 159.

[97] Anderson v. City of Wellington, 40 Kan. 173; s. c. 19 Pac. 719; 10 Am. St. 175; 2 L. R. A. 110; Brockman v. City of Creston, 79 Iowa 587; s. c. 44 N. W. 822; State v. Rowe, 72 Md. 548; s. c. 20 Atl. 179; Vosburg v. McCrary, 77 Tex. 568; s. c. 14 S. W. 195; Louisville &c. R. Co. v. Shires, 108 Ill. 617.

encroaching upon the rights of the public or of individuals must be plainly and literally conferred by the charter.[98]

§ **95. The ordinance, when passed, must be reasonable.**—A city, although fully authorized to enact ordinances, can not therefore pass unreasonable ones. The ordinance of a city must be reasonable; not inconsistent with the laws of the state; not repugnant to fundamental rights; it must not be oppressive; it must not be partial or unfair; it must not make special or unwarranted discriminations; in short, it must not contravene common right. The Kansas courts held, in a case where an ordinance was passed directed at the street parades of the Salvation Army and interdicting them, that it was illegal and void, as being partial, unreasonable and in contravention of common right.[99] All charters and laws and ordinances must be

[98] State v. Town of Belvidere, 44 N. J. L. 350; Horr & Bemis Munic. Police Ord. 18.

[99] Anderson v. City of Wellington, 40 Kan. 173; s. c. 19 Pac. 719; 10 Am. St. 175; 2 L. R. A. 110. The reasoning of the court is interesting:—"The object of this ordinance, and the danger apprehended and to be avoided by its enactment, as expressed by its terms, is to prevent the calling together of a large or unusual crowd of people on any of the streets, avenues or alleys of the city of Wellington. Then the question is this: Is a street parade with music or singing legally objectionable in itself? or does it threaten the public peace or the good order of the community? This ordinance prevents any number of the people of the state attached to one of the several political parties from marching together with their party banners and inspiring music, up and down the principal streets, without the written consent of some municipal officer. The Masonic and Odd Fellows organizations must first obtain consent before their charitable steps desecrate the sacred streets. Even the Sunday-school children can not assemble at some central point in the city and keep step to the music of the band as they march to the grove without permission first had and obtained. The Grand Army of the Republic must be preceded in its march by the written consent of his honor the mayor, or march without drums or fife, shouts or songs. It prevents a public address upon any subject being made on the streets. It prevents an unusual congregation of people on the streets under any circumstances without permission. The ordinance is framed on the theory that an unusual crowd or congregation of people upon one of the public streets of a city is either of itself a distrubance of the public peace, or that it threatens the good order of the community. A crowd of people is one of the most ordinary incidents of every-day life in any city of considerable size in this country. It is not a fair estimate of the character and habits of the American people to assume that the public peace is threatened when numbers of them congregate. We do not believe that the legislative grant of power to the city council can be so construed as to authorize the city council to take from the people of a city and the surrounding country a privilege exercised by them in every locality throughout

capable of construction, and must be construed in accordance with constitutional principles and in harmony with the general laws of the land; and any ordinance that violates any of the recognized rights and privileges, or the principles of legal and equitable rights, is necessarily void so far forth, and void entirely if it can not be applied according to its terms.[100]

§ 96. **Reasonableness—How determined.**—How shall it be determined whether or not a by-law of a city is unreasonable? There are various conditions which such a by-law should fulfill. The objects for which a corporation is created, and to accomplish which its powers are given, are usually definite and certain. No by-law, therefore, should be passed which does not in some degree look to the accomplishment of these objects. For example, a power to license certain employments is generally granted to cities. This does not mean that the license can be so fixed as to prohibit an employment by reason of its large amount; nor that the license shall be imposed solely for the sake of revenue, for that would be an exercise of the power of taxation, which power, to be rightfully exercised, must be distinctly enumerated in the charter or incorporating act. A by-law ought also to be certain.[101] It should be in harmony with common sense and common law.[102] It should not abridge rights or privileges conferred by the general laws of the state, unless express authority can be pointed out for it in the charter. It is quite possible that some things have a

the land, to form their processions and parade the streets with banners, music, songs and shouts. The power to pass such an ordinance should be clear and controlling before it can be upheld. Public parades of this character are not unlawful in their intent, purpose and result; they are not mala in se. If they are to be mala prohibita it ought to be by some general law and not by local regulation."

[100] Frazee's Case, 63 Mich. 396; s. c. 30 N. W. 72; 6 Am. St. 310. See also, Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; Mayor &c. v. Winfield, 8 Humph. (Tenn.) 707; Hayden v. Noyes, 5 Conn. 391; Waters v. Leech, 3 Ark. 110; Ex parte Burnett, 30 Ala. 461; Austin v. Murray, 6 Pick. (Mass.) 121; Western U. Tel. Co. v. Carew, 15 Mich. 525; State v. Freeman, 38 N. H. 426; State v. Mayor &c., 29 N. J. L. 170.

[101] Mayor &c. v. Phelps, 27 Ala. 55; Piper v. Chappell, 14 M. & W. 624.

[102] Village of Buffalo v. Webster, 10 Wend. (N. Y.) 99; Bush v. Seabury, 8 Johns. (N. Y.) 418; City of Bowling Green v. Carson, 10 Bush (Ky.) 64; Le Claire v. City of Davenport, 13 Iowa 210; City of St. Louis v. Weber, 44 Mo. 547; City of Bloomington v. Wahl, 46 Ill. 489; Bethune v. Hughes, 28 Ga. 560; Kip v. Mayor &c., 26 N. J. L. 298. See Cooley Const. Lim. 245, note, and the cases cited.

greater tendency to produce danger and disorder in the cities than in smaller towns and in rural places. This may justify reasonable precautionary measures, but nothing further; and no inference can extend beyond the scope of powers granted for such a purpose, and no grant of absolute discretion to suppress lawful action altogether can be granted at all. That which is an actual nuisance can be suppressed just so far as it is noxious, and its noxious character is the test of its wrongfulness. There may be substances, like some explosives, which are dangerous in cities under all circumstances, and made dangerous by municipal conditions; but most dangerous things are not so different in cities as to require more than increased or qualified safeguards; and to suppress things not absolutely dangerous as an easy way of getting rid of the trouble of regulating them is not a process tolerated under free institutions. Regulation, and not prohibition, unless under clear authority of the charter, and in cases where it is not oppressive, is the extent of municipal power.[103]

[103] Frazee's Case, 63 Mich. 396; s. c. 30 N. W. 72; 6 Am. St. 310. See chapter 14, post, on Ordinances.

CHAPTER IV.

AMENDMENT, REPEAL AND FORFEITURE OF CHARTER.

SECTION

97. The power of the state to amend, repeal or modify the charters of municipal corporations.
98. The charter of a municipal corporation not within the rule of the Dartmouth College case.
99. Construction of repealing and amendatory acts—(a) General principles.
100. (b) Statutes in pari materia construed together — Repeal by implication.
101. Municipal charter not repealed by subsequent general law unless intent to repeal is clear.
102. The same subject continued.
103. Instances of repeal of charter by general acts.
104. Repeal and amendment of charter by subsequent amendment of state constitution.
105. Repeal of general laws by enactment of municipal charter.
106. Repeal of general laws by municipal ordinance.
107. The same subject continued.
108. Construction of amendatory and repealing acts made applicable only to cities of a certain class.
109. Effect of legislation upon the charter of a city organized under special law, and not by its acceptance thereof subject to the general law.
110. Miscellaneous instances of effective repealing and amendatory acts.
111. The same subject continued.
112. What is an amendment or repeal of a municipal charter?
113. Repeal—Effect of.
114. Acceptance of amendment.
115. Manner of acceptance.
116. Constitutional limitations on power of legislature to amend or repeal municipal charters —(a) In general.
117. (b) Special legislation.
118. (c) Vested rights—Impairment of obligation of contracts—Recognition by constitution.
119. (d) Title of amendatory or repealing acts.
120. The same subject continued.
121. Forfeiture of charter in England.
122. The same subject continued.
123. Instances of forfeiture of charter under English law.
124. The charter of a municipal corporation in the United States can not be forfeited by judicial action.
125. The same subject continued.

§ 97. **The power of the state to amend, repeal or modify the charters of municipal corporations.**—The charter of a strictly public corporation is granted for purposes of the local government of the district incorporated. The powers conferred by this charter are not

vested rights as against the state, but, being wholly political, exist only during the will of the legislature; otherwise, as was declared in an Indiana case, there would be numberless petty governments existing within the state, forming a part of it, but independent of the control of the sovereign power. Such powers may at any time be repealed or abrogated by the legislature, either by general law operating upon the whole state, or by special act altering the powers of the corporation.[1] For the same reasons the state has power to amend or modify municipal charters at its will; and it may be stated as a general proposition, that the legislature of the state has full power to amend, repeal or modify the charters of the municipal corporations within the boundaries of the state, subject only to constitutional limitations of that power.[2] As is said by Judge Cooley, restraints on the legislative

[1] Sloan v. State, 8 Blackf. (Ind.) 361.

[2] Meriwether v. Garrett, 102 U. S. 472; Barnes v. District of Columbia, 91 U. S. 540; Kennedy v. City of Sacramento, 19 Fed. 580; s. c. 5 Am. & Eng. Corp. Cas. 553; Commissioners &c. v. Albany Co., 92 U. S. 307; Girard v. Philadelphia, 7 Wall. 1; Town of East Hartford v. Hartford Bridge Co., 10 How. 511; Piqua Branch &c. v. Knoop, 16 How. 369; Aspinwall v. Commissioners &c., 22 How. 364; Cobb v. Kingman, 15 Mass. 197; Berlin v. Gorham, 34 N. H. 266; Town of Granby v. Thurston, 23 Conn. 416; Inhabitants &c. v. North Yarmouth, 34 Maine 411; Inhabitants &c. v. Skillings, 45 Maine 133; Demarest v. Mayor &c., 74 N. Y. 161; People v. Tweed, 63 N. Y. 202; People v. Pinckney, 32 N. Y. 377; People v. Draper, 15 N. Y. 532; Davidson v. Mayor &c., 27 How. Pr. (N. Y.) 342; Gray v. City of Brooklyn, 2 Abb. App. Dec. (N. Y.) 267; People v. Morris, 13 Wend. (N. Y.) 325; Crook v. People, 106 Ill. 237; s. c. 5 Am. & Eng. Corp. Cas. 460; True v. Davis, 133 Ill. 522; s. c. 22 N. E. 410; 6 L. R. A. 266; Guild v. City of Chicago, 82 Ill. 472; People v. Power, 25 Ill. 187; Robertson v. City of Rockford, 21 Ill. 451; Trustees of Schools v. Tatman, 13 Ill. 27; Richland Co. v. Lawrence Co., 12 Ill. 1; Town of Marietta v. Fearing, 4 Ohio 427; Scovill v. City of Cleveland, 1 Ohio St. 126; City of San Francisco v. Canavan, 42 Cal. 541; People v. Burr, 13 Cal. 343; Philadelphia v. Fox, 64 Pa. St. 169; City of Reading v. Keppleman, 61 Pa. St. 233; Sloan v. State, 8 Blackf. (Ind.) 361; Eichels v. Evansville &c. R. Co., 78 Ind. 261; s. c. 41 Am. R. 561; City of Indianapolis v. Indianapolis Gas &c. Co., 66 Ind. 396; Roberts' Case, 51 Mich. 548; s. c. 17 N. W. 50; Smith v. Village of Adrian, 1 Mich. 495; Lynch v. Lafland, 4 Coldw. (Tenn.) 96; Daniel v. Mayor &c., 11 Humph. (Tenn.) 582; Buckner v. Gordon, 81 Ky. 665; s. c. 4 Am. & Eng. Corp. Cas. 395; Boyd v. Chambers, 78 Ky. 140; State v. Troth, 34 N. J. L. 377, 379; President &c. v. Society &c., 24 N. J. L. 385; State v. Branin, 23 N. J. L. 484; Mayor &c. v. Jersey City &c. R. Co., 20 N. J. Eq. 360; Washburn v. City of Oshkosh, 60 Wis. 453; s. c. 19 N. W. 364; Weeks v. City of Milwaukee, 10 Wis. 242; Carpenter v. People, 8 Colo. 116; s. c. 5 Pac. 828; 7 Am. & Eng. Corp. Cas. 110; City of Clinton v. Cedar Rapids &c. R. Co., 24 Iowa 455; City of Little Rock v. Parish. 36 Ark. 166; State v. Jennings, 27 Ark. 419; State v. Mayor &c., R. M. Charl.

power of control must be found in the constitution of the state, or they must rest alone in the legislative discretion.[3] Where the legislature by a general statute reserves the right to amend or repeal the charters of municipal corporations, the exercise of such power will not be questioned.[4]

§ 98. The charter of a municipal corporation not within the rule of the Dartmouth College case.—Municipal corporations do not, of course, come within the rule of the Dartmouth College case,[4a] by which the charters of private corporations were declared to be contracts, and as such protected by the constitutional prohibition of laws impairing the obligation of contracts. This is one of the fundamental differences between strictly public and other corporations. This difference and the reasons therefor are thus stated by Judge Pearson: "The substantial distinction is this: Some corporations are created by the mere will of the legislature, there being no other party interested or concerned. To this party a portion of the power of the legislature is delegated, to be exercised for the general good, and subject at all times to be modified, changed or annulled. Other corporations are the result of contract. The legislature is not the only party interested; for, although it has a public purpose to be accomplished, it chooses to do it by the instrumentality of a third party.

(Ga.) 250; Police Jury v. Shreveport, 5 La. An. 661; City of New Orleans v. Hoyle, 23 La. An. 740; In re Hinkle, 31 Kan. 712; s. c. 3 Pac. 531; 4 Am. & Eng. Corp. Cas. 369; State v. Mayor &c., 24 Ala. 701; City of St. Louis v. Cafferata, 24 Mo. 94; City of St. Louis v. Allen, 13 Mo. 400; City of St. Louis v. Russell, 9 Mo. 507; State v. Cowan, 29 Mo. 330; Wallace v. Trustees &c., 84 N. C. 164; Mills v. Williams, 11 Ired. (N. C.) 558; Langworthy v. City of Dubuque, 16 Iowa 271; Howard v. McDiarmid, 26 Ark. 100; Bradshaw v. City of Omaha, 1 Neb. 16; Kuhn v. Board of Education, 4 W. Va. 499; Hess v. Pegg, 7 Nev. 23; Groff v. Mayor &c., 44 Md. 180; Mayor &c. v. Sehner, 37 Md. 180; Blessing v. City of Galveston, 42 Tex. 641.

[3] Cooley Const. Lim. 229. See also, §§ 57, 63, 64, 69, 70, 78, 79, ante.

[4] Covington v. Kentucky, 173 U. S. 231; s. c. 19 S. Ct. 383; Tomlinson v. Jessup, 15 Wall. 454, 458; Railroad Co. v. Maine, 96 U. S. 499, 510; Railroad Co. v. Georgia, 98 U. S. 359, 365; Hoge v. Railroad Co., 99 U. S. 348, 353; Sinking Fund Cases, 99 U. S. 700, 720; Greenwood v. Freight Co., 105 U. S. 13, 21; Close v. Glenwood Cemetery, 107 U. S. 466, 476; s. c. 2 S. Ct. 267; Spring Valley Water Works v. Schottler, 110 U. S. 347, 352; s. c. 4 S. Ct. 48; Louisville Gas Co. v. Citizens' &c. Co., 115 U. S. 683, 696; s. c. 6 S. Ct. 365; Gibbs v. Consolidated Gas Co., 130 U. S. 396, 408; s. c. 9 S. Ct. 553; Sioux City R. Co. v. Sioux City, 138 U. S. 98, 108; s. c. 11 S. Ct. 226; Louisville Water Co. v. Clark, 143 U. S. 1, 12; s. c. 12 S. Ct. 346. Under constitution of North Carolina, as amended in 1875, the legislature has power to amend the charter of a city: Harriss v. Wright, 121 N. C. 172; s. c. 28 S. E. 269.

[4a] 4 Wheat. 518.

These two parties make a contract. The legislature for and in consideration of certain labor and outlay of money confers upon the party of the second part the privilege of being a corporation with certain powers and capacities. The expectation of benefit to the public is the moving consideration on one side; that of expected remuneration for the outlay is the consideration on the other. It is a contract, and therefore can not be modified, changed or annulled without the consent of both parties."[5]

§ 99. **Construction of repealing and amendatory acts—(a) General principles.**—The great principle controlling the construction of repealing and amendatory acts, as of all other statutes, is that the intention of the legislature must be ascertained and carried into effect. In addition to this fundamental principle, it is also to be constantly borne in mind in construing these acts, that the courts require the clearest expression of the intention on the part of the legislature to repeal or alter existing laws. Where the two statutes can be so construed as to allow both to stand, the courts will always adopt such a construction. In order to effect repeal the later statute must either expressly repeal the former, or its provisions must be so entirely repugnant to those of the earlier statute that by no reasonable con-

[5] Mills v. Williams, 11 Ired. (N. C.) 558; Cooley Const. Lim. 334–337. See § 97, ante. It is conceded learning that the charter of a municipal corporation is not a contract. In order to obviate the difficulties arising from the fact that the charters of private corporations are contracts, and as such inviolable, many of the states have constitutional provisions and general statutes reserving the right of amendment and repeal of such charters: 1 Beach Priv. Corp., § 36, and cases cited. "In consequence of the decision in that case (Dartmouth College Case, 4 Wheat. 518), a general law was spread upon the statute book of nearly all, if not quite all, the states of the Union, reserving to the legislature power to alter or modify all such charters as should be thereafter granted, according to its will and pleasure:" "Legislative Power to Amend Charters," by Wm. L. Royall, Esq., 11 Am. L. Reg. (N. S.) 1, where several phases of the exercise of this power are discussed. Such constitutional and statutory reservations are unnecessary in the case of strictly public corporations. As was said by Justice Field in an important case, considering the effect of legislation by which the municipal government of Memphis was abolished:—"There is no contract between the state and the public that the charter of a city shall not at all times be subject to legislative control. All persons who deal with such bodies are conclusively presumed to act upon knowledge of the power of the legislature. There is no such thing as a vested right held by any individual in the grant of legislative power to them: Meriwether v. Garrett, 102 U. S. 472. See also, an article by H. Campbell Black, Esq., on "Legislation Impairing the Obligation of Contracts," in 25 Am. L. Reg. (N. S.) 81, 83.

struction can the two acts stand together, as the law does not favor repeals by implication.[6]

§ 100. (b) Statutes in pari materia construed together—Repeal by implication.—An excellent illustration of the rule is found in a Maryland case, where an amendment to the charter of the city of Cumberland prohibited the mayor and common council from pledging

[6] Cape Girardeau Co. Court v. Hill, 118 U. S. 68; s. c. 6 S. Ct. 951; McCool v. Smith, 1 Black 459; United States v. Twenty-five Cases of Cloths, Crabbe 356; Henderson's Tobacco, 11 Wall. 652; Snell v. Bridgewater &c. Co., 24 Pick. (Mass.) 296; Goddard v. City of Boston, 20 Pick. (Mass.) 407; Towle v. Marrett, 3 Maine 22; Attorney-General v. Brown, 1 Wis. 513; Attorney-General v. Railroad Companies, 35 Wis. 425; City of Janesville v. Markoe, 18 Wis. 350; In re Henry Street, 123 Pa. St. 346; s. c. 16 Atl. 785; McFate's Appeal, 105 Pa. St. 323; Kilgore v. Commonwealth, 94 Pa. St. 495; Rounds v. Waymart, 81 Pa. St. 395; Erie v. Bootz, 72 Pa. St. 196; McKenna v. Edmundstone, 91 N. Y. 231; People v. Quigg, 59 N. Y. 83; Covington v. City of East St. Louis, 78 Ill. 548; City of East St. Louis v. Maxwell, 99 Ill. 439; State v. Williamson, 44 N. J. L. 165; Naylor v. Field, 29 N. J. L. 287; Water Works Co. v. Burkhart, 41 Ind. 364; Blain v. Bailey, 25 Ind. 165; Hirn v. State, 1 Ohio St. 15, 20; Cass v. Dillon, 2 Ohio St. 607; State v. Mayor &c., 14 Ohio St. 472; Dodge v. Gridley, 10 Ohio 173; Clark v. City of Davenport, 14 Iowa 494; State v. Berry, 12 Iowa 58; Chesapeake &c. R. Co. v. Hoard, 16 W. Va. 270; Ex parte Schmidt, 24 S. C. 363; McGruder v. State, 83 Ga. 616; s. c. 10 S. E. 281; Greeley v. City of Jacksonville, 17 Fla. 174; City of New Orleans v. Southern Bank, 15 La. An. 89; Swann v. Buck, 40 Miss. 268; People v. Hanrahan, 75 Mich. 611; s. c. 42 N. W. 1124; 4 L. R. A. 751; Connors v. Carp River Iron Co., 54 Mich. 168; s. c. 19 N. W. 938; In re Ryan, 45 Mich. 173; s. c. 7 N. W. 819; Ayeridge v. Social Circle Com'rs, 60 Ga. 404; People v. Londoner, 13 Colo. 303. See also, cases cited in preceding note; 1 Dillon Munic. Corp., §§ 86, 87; 15 Am. & Eng. Encyc. of Law 974, 975, tit. Municipal Corporations; Annotated Case by M. D. Ewell, Esq., 18 Am. L. Reg. (N. S.) 20, 25, containing a full citation of cases upon the general subject of repeals by implication. Mich. Act of 1899, No. 154, is not inconsistent with Grand Rapids Charter Act of 1893, No. 206: Board &c. v. Board &c., 124 Mich. 491; s. c. 83 N. W. 209. An act of New Jersey entitled "An act concerning cities" does not apply to "incorporated towns": Day v. City of Morristown, 63 N. J. L. 353; s. c. 43 Atl. 1098. Power given to a city to imprison certain designated classes of persons is a delegation of power to pass prohibitory penal ordinances where, for a violation, imprisonment is to follow: City of New Orleans v. Collins, 52 La. An. 973; s. c. 27 So. 532. Construction of Mass. St. 1892, ch. 419, in reference to permits for buildings: Greene v. Damrell, 175 Mass. 394; s. c. 56 N. E. 707. Kansas City charter construed in reference to revenues: Pryor v. City of Kansas City, 153 Mo. 135; s. c. 54 S. W. 499. Construction of Oakland City, Cal., city charter under constitution: People v. City of Oakland, 123 Cal. 145; s. c. 55 Pac. 772. Mo. Rev. St. 1889, § 1880, construed in City of Kansas City v. Stegmiller, 151 Mo. 189; s. c. 52 S. W. 723.

the credit of the city for any sum exceeding $10,000 without first submitting the question to the voters after notice, and a subsequent statute authorized those officers to issue bonds for the purpose of raising money to build a certain bridge. The courts decided that there was no repugnancy between the amendment and the subsequent act, and that the exercise of the new power must be subject to the proviso previously annexed to the effective part of the charter. It was declared in the opinion that where two laws only so far differ as that by any other construction they may both stand, the rule "leges posteriores priores contrarias abrogant" does not apply, and that the later law is no repeal of the earlier act.[7] As is said by Judge Cooley: "Repeals by implication are not favored, and the repugnancy between two statutes should be very clear to warrant a court in holding that the later in time repeals the other when it does not in terms do so. This rule has peculiar force in the case of laws of special and local application, which are never to be deemed repealed by general legislation except upon the most unequivocal manifestation of intent to that effect."[8]

§ 101. **Municipal charter not repealed by subsequent general law unless intent to repeal is clear.**—As the charter of a municipal corporation is a special act, a general law passed subsequent to the charter will not repeal the provisions of the charter either by implication or by a general clause repealing all acts contrary to its provisions, unless the intent of the legislature to effect such repeal is clear.[9] For example, a city in California adopted in its charter the methods of the general revenue act, at that time in force, for collecting and assessing the municipal taxes, and when that general revenue act was repealed and a general law regulating the creation and government of municipal corporations and containing provisions for the assessment and collection of the city taxes was passed, the courts held that the provisions of the charter were not repealed by

[7] Mayor &c. v. Magruder, 34 Md. 381. Subsequent laws do not repeal former ones by containing different provisions; they must be contrary: Bond v. Hiestand, 20 La. An. 139.

[8] Cooley Const. Lim. 183; 18 Am. L. Reg. (N. S.) 20, 25.

[9] State v. Branin, 23 N. J. L. 484; State v. Mayor &c., 3 N. J. L. 57; State v. Common Council &c., 36 N. J. L. 198; State v. Mayor &c., 29 N. J. L. 170; Tierney v. Dodge, 9 Minn. 166; President &c. v. County of La Salle, 12 Ill. 339; City of East St. Louis v. Maxwell, 99 Ill. 439; Haywood v. Mayor &c., 12 Ga. 404; Mayor v. Inman, 57 Ga. 370; McGarty v. Deming, 51 Conn. 422; City of Harrisburg v. Sheck, 104 Pa. St. 53; In re Egypt Street, 2 Grant Cas. (Pa.) 455; In re Commissioners &c., 50 N. Y. 493; People v. Clunie, 70 Cal. 504; s. c. 11 Pac. 775; Bond v. Hiestand, 20 La. An. 139; Mayor &c. v. Magruder, 34 Md. 381; Hammond v. Haines, 25 Md. 541.

the passage of the subsequent legislation, and that the municipality should continue to assess and collect its taxes according to the methods prescribed in its charter.[10]

§ 102. The same subject continued.—Where the two statutes are so inconsistent that they can not be construed to stand together, the usual principles governing the construction of statutes must be applied in order to ascertain whether it was the intention of the legislature that the charter should be superseded by the general statute, or whether the charter is excepted from the operation of the general law. In order to arrive at the intention of the legislature, the charter and the general act must be considered in the light of the general legislation on the subject, and each provision of the charter or the general statute must be read with reference to the other provisions.[11]

§ 103. Instances of repeal of charter by general acts.—Thus, an act of the New Jersey legislature which in terms applied to all cities was construed to apply to all, and to repeal all inconsistent charter provisions, because the constitution of that state prohibited special legislation, and if any city were excepted from the operation of the act in question, it would be a special law and unconstitutional. Therefore, ut res magis valeat quam pereat, the interpretation which validated the law was adopted.[12] And so, where a chapter of a Minnesota statute provided that every village incorporated under the general statutes should thereafter be governed according to the pro-

[10] People v. Clunie, 70 Cal. 504; s. c. 11 Pac. 775. In New Jersey a similar case arose, in which the same principle was upheld and a provision in a city charter concerning taxation was declared to remain in force notwithstanding the passage of a subsequent general act regulating that subject: State v. Branin, 23 N. J. L. 484. See also, last note to preceding section, and § 86, ante, as to effect of amendment of charter upon existing ordinances.

[11] State v. City of Camden, 50 N. J. L. 87; s. c. 11 Atl. 137; New Bedford &c. R. Co. v. Achushnet &c. R. Co., 143 Mass. 200; s. c. 9 N. E. 536; Board &c. v. Leavitt, 4 N. M. 37; s. c. 12 Pac. 759; Moran v. Long Island City, 101 N. Y. 439; s. c. 5 N. E. 80; Smith v. Kernochen, 7 How. 198; State v. Spaude, 37 Minn. 322; s. c. 34 N. W. 164; Holland v. Mayor &c., 11 Md. 186; City of Janesville v. Markoe, 18 Wis. 350; Powell v. City of Parkersburg, 28 W. Va. 698; Board &c. v. Davies, 1 Wash. 290; s. c. 24 Pac. 540; Thomason v. Ashworth, 73 Cal. 73; s. c. 14 Pac. 615; Eichels v. Evansville &c. R. Co., 78 Ind. 261; 1 Dillon Munic. Corp., § 87. As an illustration of the doctrine of the text in a Maryland case, the definition in a later statute of a term used in an earlier law was considered by the courts in construing the prior statute: Holland v. Mayor &c., 11 Md. 186. See also, § 82, ante.

[12] State v. City of Camden, 50 N. J. L. 87; s. c. 11 Atl. 137.

visions of that chapter, to the end that uniformity of village government and equal privileges to all might be secured, it was held that in view of this expressed intention, and the fact that the general statutes contained no provision as to village government, the section applied to all villages incorporated under any general law of the state.[13]

§ 104. **Repeal and amendment of charter by subsequent amendment of state constitution.**—In this case as in other cases of repeal, the intention of the legislature is the point to be considered, but with the qualification that the courts incline strongly to declare the charter provisions void if there be any inconsistency, and do not go so far in their efforts to reconcile the two laws. This, of course, is due to the greater weight of the constitution as the organic law of the state. Thus, in a California decision, the provisions of a city charter referring to streets were considered to have been repealed by the enactment of a new state constitution containing provisions thought by the court inconsistent with the charter provisions.[14] And so, where the charter of the city of East St. Louis contained a limitation on the power of taxation for the payment of bonded indebtedness, that limitation was held to be abrogated by an inconsistent provision of a state constitution subsequently adopted.[15]

[13] State v. Spaude, 37 Minn. 322; s. c. 34 N. W. 164. Laws N. M., 1884, chs. 37, 39, relating to the incorporation, disincorporation and reincorporation of cities, are in pari materia, and must be read together, and be taken as part of the same act; and their joint effect is to continue the existence of municipal corporations created under the act of February 11, 1880, entitled "An act for the incorporation of cities," and to enable them, if they choose, either to reincorporate under the provisions of ch. 39, laws 1884, or to dissolve their corporation absolutely: Board &c. v. Leavitt, 4 N. M. 37; s. c. 12 Pac. 759. Act Wash., March 27, 1890, providing for the organization of municipal corporations, affects existing corporations, since by its terms it provides for corporations attempted to be organized under a previous void act, and existing corporations are authorized to adopt its provisions as to government and classification: Board &c. v. Davies, 1 Wash. 290; s. c. 24 Pac. 540. In the last cited case it was declared, in accordance with the doctrine of the text, that where two statutes embracing the same subject-matter are passed at the same session of the legislature, they should be construed as one act if possible, but if in irreconcilable conflict the later statute should prevail. Minn. Gen. Laws, 1885, ch. 145, § 2, applies to all villages previously governed by general laws: Flynn v. Little Falls &c. Co., 74 Minn. 180; s. c. 78 N. W. 106.

[14] Donahue v. Graham, 61 Cal. 276.

[15] East St. Louis v. Amy, 120 U. S. 600; s. c. 7 S. Ct. 739; Public School Trustees v. Taylor, 30 N. J. Eq. 618; Mayor &c. v. Dechert, 32 Md. 369.

§ 105. Repeal of general laws by enactment of municipal charter.—The principles considered in the preceding sections must be applied in considering the question whether the enactment of a municipal charter repeals the provisions of a prior general law. The intention of the legislature to repeal the general law by the enactment of the charter must be clear and beyond uncertainty. The rule that repeals by implication are not favored is strictly applied in this relation.[16] The ordinances of a municipal corporation, if authorized by its charter, have the same effect within its limits and with respect to persons upon whom they lawfully operate that an act of the legislature has upon the people at large.[17] Consequently, where an ordinance authorized by the charter of the municipality is in apparent or real conflict with a general law, the same principles must be applied in deciding whether the general law and the ordinance can stand together, or whether they are fatally inconsistent; as, where the provision of the charter itself is in question. When the constitution authorizes cities to frame their own charters and make regulations subject to and not in conflict with general law the latter is paramount.[18] A charter which provides that, after its ratification and adoption, it shall supersede all laws of the state, makes the charter paramount to all general laws in conflict therewith.[19] Where the constitution provides that a city may frame and amend its charter, such special charter and its amendments supersede general statutes that conflict in so far as mere municipal regulations are concerned.[20] Where a city is organized under a special charter the general law is inapplicable.[21] Upon the division of a corporation the old corporation retains the title to the property, unless there is a statutory provision to the contrary.[22]

[16] Ex parte Garza, 28 Tex. App. 381; s. c. 13 S. W. 779; 19 Am. St. 845; State v. Clarke, 54 Mo. 17; State v. De Bar, 58 Mo. 395; Village of St. Johnsbury v. Thompson, 59 Vt. 300; State v. Young, 17 Kan. 414; State v. Mills, 34 N. J. L. 177; Seibold v. People, 86 Ill. 33. See also, §§ 77, 94, ante.

[17] Village of St. Johnsbury v. Thompson, 59 Vt. 300; Des Moines Gas Co. v. City of Des Moines, 44 Iowa 505, 508; s. c. 24 Am. R. 756. This is conceded learning. The cases supporting the doctrine will be found in the chapter on Ordinances and By-Laws, post.

[18] Tacoma Gas &c. Co. v. City of Tacoma, 14 Wash. 288; s. c. 44 Pac. 655.

[19] Kansas City v. Ward, 134 Mo. 172; s. c. 35 S. W. 600.

[20] City of Kansas City v. Marsh Oil Co., 140 Mo. 458; s. c. 41 S. W. 943.

[21] City of Kansas v. Zahner, 73 Mo. App. 396. Act of Cal., March 8, 1897, does not apply to San Francisco: Popper v. Broderick, 123 Cal. 456; s. c. 56 Pac. 53.

[22] Inhabitants &c. v. Mayor &c., 55 N. J. Eq. 505; s. c. 37 Atl. 63.

§ 106. Repeal of general laws by municipal ordinance.—In a Vermont case there is a strong and interesting presentation of the learning on this point. A general law of the state of Vermont authorized the selectmen of villages to license victualing-houses. With this law in force the village of St. Johnsbury was incorporated by act of the legislature with a charter authorizing the village to pass by-laws regulating the licensing of victualing-houses. Under this charter the village adopted a by-law authorizing its trustees to license victualing-shops. The validity of the by-law was called into question, and in the opinion of the court it was said: "The by-laws of municipal corporations, when authorized by the charter, have the same effect within its limits, and with respect to persons upon whom they lawfully operate, that an act of the legislature has upon the people at large.[23] So if the by-law is authorized by the charter it has the effect of a special law of the legislature within the limits of the village, and supersedes the general law upon the subject of victualing-houses therein; for the charter giving the village power to pass the by-law inconsistent with, and repugnant to, the general law, by necessary implication operated to repeal the general law, within the territorial limits of the village, on the principle that provisions of different statutes which are in conflict with one another can not stand together, and in the absence of anything showing a different intent on the part of the legislature, general legislation upon a particular subject must give way to later inconsistent special legislation upon the same subject."[24]

§ 107. The same subject continued.—An interesting application of the principles discussed in the last section is to be found in the efforts of various municipalities to license houses of prostitution, where such houses are prohibited by the general criminal statutes of the state. In a recent Texas case this question arose.[25] By its charter the city of San Antonio, which was incorporated by special act of the legislature, was empowered inter alia to suppress and re-

[23] Village of St. Johnsbury v. Thompson, 59 Vt. 300.

[24] 1 Dillon Munic. Corp., § 88; 4 Kent Com. 466, note; In re Snell, 58 Vt. 207; s. c. 1 Atl. 566; State v. Mayor &c., 33 N. J. L. 57; State v. Clarke, 25 N. J. L. 54; Daviess v. Fairbairn, 3 How. 636; In re Goddard, 16 Pick. (Mass.) 504; State v. Clarke, 54 Mo. 17; Mark v. State, 97 N. Y. 572. One licensed by a county under a law authorizing it to tax the sale of liquor may be required to pay an additional license under a city ordinance authorized by a charter granted after the county license was issued: City of Elk Point v. Vaughn, 1 Dak. 113; s. c. 46 N. W. 577. See § 88, ante.

[25] Ex parte Garza, 28 Tex. App. 381; s. c. 13 S. W. 779; 19 Am. St. 845.

strain disorderly houses, bawdy-houses and houses of prostitution, to enact ordinances to restrain and punish prostitutes and to prevent and punish the keeping of houses of prostitution within the city. Under these powers the city council passed an ordinance licensing houses of prostitution within the city. At the time of the passage of the ordinance houses of prostitution were prohibited by the penal code of the state. It was claimed on the one hand that the ordinance was void as being repugnant to a general law of the state, while on the other hand it was contended that by the passage of the charter provisions authorizing the city to restrain, regulate and suppress such establishments, the general law was, although not expressly, still by necessary implication, repealed. The former view was upheld by the courts, and in the opinion it was said: "If it was the intention of the legislature to repeal this general law within the corporate limits of said city, it is reasonable to presume that such intention would have been plainly and expressly declared, and not left to be implied merely. It is reasonable to presume that if it had been intended to grant the power to license such houses, the legislature would, as it did in the charter of the city of Waco, have expressly granted such power. That such was not the legislative intent is also, and to our minds very cogently, shown by the fact that the power to license other occupations was expressly conferred upon the city."[26]

§ 108. Construction of amendatory and repealing acts made applicable only to cities of a certain class.—The provisions of amendatory and repealing statutes are sometimes made applicable in terms only to cities of a certain grade or class. In construing these acts the question often arises as to whether they take effect, ipso facto, upon the city reaching the required population, or whether it is necessary for the city to comply with the statutory formalities required in order to formally raise the city from the lower to the higher grade

[26] Ex parte Garza, 28 Tex. App. 381; s. c. 13 S. W. 779; 19 Am. St. 845. The opinion also refers to the Missouri case on the same subject, where it was held that the power to regulate included the power to license: State v. Clarke, 54 Mo. 17. See also, State v. De Bar, 58 Mo. 395; Smith v. City of Madison, 7 Ind. 86; City of Burlington v. Lawrence, 42 Iowa 681. But it is to be noted, as is remarked in the opinion, that in the Missouri case the original charter authorized the city of St. Louis to suppress bawdy-houses, while by an amendment the city was further empowered to regulate and suppress these resorts. In another Missouri decision it was held that a special act of the legislature expressly conferring upon the city of St. Louis the power to permit beer saloons to remain open on Sunday operated within the city limits a repeal of the general statute prohibiting such act: State v. Binder, 38 Mo. 451.

before the acts take effect. In a recent Utah case, where certain sections of a statute amendatory of city charters were by express terms made applicable to cities having a population of over twenty thousand, and pointed out a manner in which the number of inhabitants of a given city might be determined, the court nevertheless enforced the act by taking judicial notice of the population as shown by the last decennial census without anything being done on the part of the city.[27] On the other hand, under the Ohio statute providing that "existing corporations organized as cities of the second class shall remain such until they become cities of the first class," a mere increase of population has been held not to advance such cities from the second to the first class, but to accomplish that end the provisions of the statute must be complied with.[28]

§ 109. Effect of legislation upon the charter of a city organized under special law, and not by its acceptance thereof subject to the general law.—Where it is provided, as is frequently the case, that a city organized by special act may elect to become subject to a subsequent general law providing for the creation of municipalities throughout the state, and any city refuses to make such election and remains subject to its original special charter, legislation affecting cities organized under the general law does not effect an amendment or repeal of the provisions of that special charter. So the city of Wilkesbarre, never having accepted the provisions of the Pennsylvania statute regulating the government of cities, and making the petition of a majority of the lot-owners a condition precedent to the pavement of a street, was held to be not subject thereto, but to be governed by its own charter, which did not require such petition.[29] And in

[27] People v. Page, 6 Utah 353; s. c. 23 Pac. 761; 29 Am. & Eng. Corp. Cas. 57. See also, § 48, ante. The courts will in general take judicial notice of the population of a city as ascertained by the federal census: State v. Herrmann, 75 Mo. 340; State v. Anderson, 44 Ohio St. 247; s. c. 6 N. E. 571; City of Topeka v. Gillett, 32 Kan. 431; s. c. 4 Pac. 800.

[28] State v. Wall, 47 Ohio St. 499; s. c. 24 N. E. 897. Amendment of charters of cities of over 100,000 population in Missouri,—see City of Kansas City v. Stegmiller, 151 Mo. 189; s. c. 52 S. W. 723.

[29] Beaumont v. City of Wilkesbarre, 142 Pa. St. 198; s. c. 21 Atl. 888. And in construing the same general statute, it was held accordingly that the statute in question, the act of May 23, 1874 (P. L. Pa. 231), and the supplemental act of April 11, 1876 (P. L. 21), establishing a uniform and general system of government for all cities, was not designed to repeal any municipal charter previously created by special enactment, and a city which has not accepted the act is not subject to its provisions: In re Henry St., 123 Pa. St. 346; s. c. 16 Atl. 785.

Colorado and California similar rulings were made even in the case of constitutional provisions affecting cities organized under the general law.[30]

§ 110. **Miscellaneous instances of effective repealing and amendatory acts.**—Where a repealing or amendatory act expressly declares that the act shall apply to all cities and towns of the state, of course those charters of cities and towns within the state which are inconsistent with the provisions of the act are thereby repealed or altered, as the intention of the legislature to effect such repeal or amendment is expressly indicated.[31] Where the earlier and later legislation are

[30] The constitution of Colorado, article 14, § 13, authorized the general assembly to provide by general laws for organization and classification of cities and towns, and to define by general laws the powers of each class, so that all of the same class shall possess the same powers, etc. Section 14 provided that the general assembly should make provision by general law whereby any city incorporated by special law might elect to become subject to the general law. The city of Denver never elected to be reincorporated under the general laws; but, on the contrary, its charter was often amended. It was decided that the constitution, article 7, § 12, providing that the general assembly shall by general law designate the courts and judges by whom election contests shall be tried, did not in effect repeal an existing provision in the Denver city charter authorizing the city council to determine contests as to the election of mayor, nor did it invalidate a subsequent amendment to such provision: People v. Londoner, 13 Colo. 303; s. c. 22 Pac. 764; 6 L. R. A. 444; Carpenter v. People, 8 Colo. 116; s. c. 5 Pac. 828; 7 Am. & Eng. Corp. Cas. 110. The complaint in an action by a California city organized under a special charter was according to the form prescribed by a section of the charter. There was nothing to indicate that such section had been repealed or modified prior to the adoption of the constitution of California of 1879, or that the city as a corporation ever reorganized under the act of 1883 (acts Cal. 1883, p. 235), providing for the organization of cities under general laws. The court held that the complaint was not obnoxious to the constitution of California of 1879, article 11, § 6, providing that "corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population of cities, towns," etc.: City of Stockton v. Western &c. Ins. Co., 73 Cal. 621; s. c. 15 Pac. 314.

[31] Thus a clause in an act declaring that "this act shall apply to all cities and towns in this state, anything in their charters to the contrary notwithstanding," makes the act operative in those cities whose charters have contrary provisions: In re House Resolution Relating to House Bill No. 116, 12 Colo. 289; s. c. 21 Pac. 484; In re Senate Resolution Relating to Senate Bill No. 1, 12 Colo. 290; s. c. 21 Pac. 484. Also it has been decided that laws of Utah, 1888, ch. 48, article 20, § 5, providing that the sections thereof specifying the number of wards, and the officers to be elected, in cities of certain classes, shall apply

obviously and fatally inconsistent, the later act repeals the former. Thus, a Texas statute which incorporated the town of Henderson, with limits one mile square, the court-house being in the center, was impliedly repealed by a subsequent act incorporating the same town, with limits extending "one-half mile in every direction from the court-house."[32] In the famous cases in which the members of the board of aldermen of New York, known as the "boodle" aldermen, were indicted for receiving bribes in connection with the purchase by Jacob Sharp of the franchise to operate a street railway through Broadway, the charter of the city provided a penalty in the case of municipal officials for the crime of receiving bribes. A provision of the penal code adopted after the passage of that charter provision imposed a greater penalty upon the same offense. The provision of the penal code was held to supersede and repeal the charter provision.[33]

§ 111. **The same subject continued.**—In general it may be stated that where a question arises as to whether the provisions of a municipal charter are repealed by subsequent legislation, the intention of the legislature must be ascertained according to the general rules governing the construction of statutes, subject to the special limitations indicated in the preceding sections; and where, either expressly or by clear and necessary implication, the intention of the legislature to amend or repeal the provisions of the charter is apparent, such amendment or repeal is effected.[34]

to cities already organized, effects an amendment of the charters of such cities, though the act contains no repealing clause: People v. Page, 6 Utah 353; s. c. 23 Pac. 761. See also, Trustees &c. v. Keeting, 4 Denio (N. Y.) 341; Bank v. Bridges, 30 N. J. L. 112; Coe v. Meriden, 45 Conn. 155; Tierney v. Dodge, 9 Minn. 166.

[32] Buford v. State, 72 Texas 182; s. c. 10 S. W. 401.

[33] People v. O'Neil, 109 N. Y. 251; s. c. 16 N. E. 68; People v. Jaehne, 103 N. Y. 182; s. c. 8 N. E. 374.

[34] Buford v. State, 72 Texas 182; s. c. 10 S. W. 401; State v. Severance, 55 Mo. 378; State v. Miller, 30 N. J. L. 368; s. c. 86 Am. D. 188; Allen v. People, 84 Ill. 502, and cases already cited. N. Y. Laws 1885, ch. 270, providing for the preservation of the public health, etc., being general in its application, repeals and supersedes the provisions of a village charter relating to the same subject: People v. Daley, 37 Hun (N. Y.) 461. The provision of the city charter of Oakland, granted in 1854, giving the common council exclusive jurisdiction to determine an election contest for the office of councilman, was impliedly repealed by Code Civil Proc. Cal., § 1111 et seq., providing that any elector of a county or city, or any political subdivision of either, may contest for causes therein stated, and that such contest must be determined by a special session of the superior court: McGivney v. Pierce, 87 Cal. 124; s. c. 25 Pac. 269. The construction of

§ 112. What is an amendment or repeal of a municipal charter?—The constitution of the state sometimes prescribes specific methods according to which the amendment or repeal of municipal charters may be effected. Under these constitutional provisions it is necessary to determine whether legislative or other action is an amendment or a repeal of the charter within the meaning of the statute. In Missouri it has been decided that an ordinance extending the limits of a city, the boundaries of which had been originally defined by its charter, was an amendment to the charter.[35] But an act of the legislature, conferring upon a city powers additional to what it already had under its charter, was regarded in an Oregon case as supplemental to the charter, and not as an amendment or revision of it, within that provision of the constitution which provides that when an act is revised, or a section amended, the act or section so revised or amended shall be set forth at full length.[36] The charter of the city of New York originally provided that the aldermen of that city should sit as judges of the court of general sessions; and it was held that an act depriving the aldermen of that right was an act amending the charter, and, as such, required a vote of two-thirds of the members elected to each branch of the legislature. Such an act passed without that vote was declared void.[37]

municipal ordinances is governed by the same rules that are applied to statutes in similar cases: State v. Mayor &c., 40 N. J. L. 257; s. c. annotated 18 Am. L. Reg. (N. S.) 20.

[35] The constitution of Missouri, article 9, § 16, provides that any city having a population of one hundred thousand may frame a charter for its own government, which must be approved by four-sevenths of the qualified voters, and which, when "so adopted, may be amended by a proposal therefor made by the law-making authorities of such city, . . . and accepted by three-fifths of the qualified voters of such city, . . . and not otherwise." Kansas City adopted such a charter, one of whose provisions defined the territorial limits of the city. It was held that an ordinance to extend such limits was an amendment to the charter, and must be accepted by three-fifths of the voters, as required by the constitution. And, although the same section of the constitution further provided that "such charter shall always be . . . subject to the constitution and laws of this state," this was decided to confer no authority on the legislature to authorize amendments to the charter otherwise than as provided by the constitution; and hence act of Missouri, March 10, 1887, providing that the territorial limits of such a city may be extended by ordinance, was held to be void so far as it proposes to dispense with the assent of three-fifths of the qualified voters of the city to such ordinance: City of Westport v. Kansas City, 103 Mo. 141; s. c. 15 S. W. 68.

[36] Sheridan v. Salem, 14 Or. 328; s. c. 12 Pac. 925.

[37] Purdy v. People, 4 Hill (N. Y.) 384.

§ 113. **Repeal—Effect of.**—Where a charter is repealed and a new one granted for the same territory, property and corporators, and the property of the old corporation passes to the new without consideration, the new corporation becomes responsible for the debts of the old.[38] The express repeal of an existing charter does not revive the original charter, but the municipality ceases. The repeal of the charter suspends the statute of limitations until the corporation is organized under a new charter and takes benefits from the property of the old corporation.[39] An amendment, unless otherwise provided by law, takes effect on its approval.[40]

§ 114. **Acceptance of amendment.**—The legislature has, in the absence of constitutional limitations to the contrary, the power to impose an amendment of the charter without the consent of the inhabitants of the municipality, as it has the power to impose the original charter without such consent;[41] but it is frequently provided that an amendment of the charter shall not become a law until the municipal government or the inhabitants of the municipality shall, in a manner indicated by the statute, signify their acceptance of the amendment.[42] The provision of a state constitution that new charters or amendments thereto shall be sumbitted for ratification to the voters of the city whose charter it is proposed to change is not in violation of the constitution of the United States, article 4, section 4.[43]

[38] Broadfoot v. City of Fayetteville, 124 N. C. 478; s. c. 32 S. E. 804.

[39] State v. Village of Reads (Minn.), 78 N. W. 883; Broadfoot v. City of Fayetteville, 124 N. C. 478; s. c. 32 S. E. 804.

[40] City of Kansas City v. Stegmiller, 151 Mo. 189; s. c. 52 S. W. 723.

[41] See §§ 56, 72, 77, 78, ante.

[42] Attorney-General v. Shepard, 62 N. H. 383; In re Henry Street, 123 Pa. St. 346; s. c. 16 Atl. 785; Largen v. State, 76 Texas 323; s. c. 13 S. W. 161; State v. Mayor &c., 73 Mo. 435; Foote v. City of Cincinnati, 11 Ohio 408; Mayor &c. v. Finney, 54 Ga. 317; §§ 53, 77, 78, ante. The legislature of Texas passed an act empowering "any incorporated town or city" to amend its own charter, "whenever in the judgment of the board of aldermen" an amendment became necessary or desirable. The act prescribed the manner of proposing and voting upon amendments, and further provided that "no amendments shall be proposed or submitted by any board of aldermen which shall contravene, or be repugnant to, the constitution or statute laws of this state." The constitutionality of this law is discussed by a correspondent of the Central Law Journal, who arrives at the conclusion that it is not obnoxious to the maxim which forbids a delegation of legislative authority: 2 Cent. L. Jour. 33. See also, People v. Bagley, 85 Cal. 343; s. c. 24 Pac. 716; and §§ 43, 48 ante.

[43] Hopkins v. City of Duluth, 81 Minn. 189; s. c. 83 N. W. 536.

§ 115. **Manner of acceptance.**—Where this acceptance is made a condition of the amendment, it must be signified according to the method prescribed by the statute in order to validate the amendment. Thus in Ohio it was provided that an amendment to a city charter should take effect when adopted "by a majority of the voters of the city." The city and the township were coterminous, but different qualifications for voters were in force in the two corporations. The vote on the acceptance of the amendment was held at the township polls; and the courts declared that the election was void and the amendment ineffectual, on the ground that the statutory provision contemplated a vote at the city polls.[44] A substantial compliance with the requirements of the statute is, however, sufficient.[45] When no provision is made by the amending act for the assent of the municipality or its citizens, it is proper for the court to infer that assent from such acts of the citizens as show their willingness to become subject to the amendment.[46]

§ 116. **Constitutional limitations on power of legislature to amend or repeal municipal charters—(a) In general.**—It has been already stated that the sole restrictions on the power of the legislature to amend, repeal or alter the charters of municipal corporations are to be found in the constitutions of the United States and of the several states. These restrictions are the same that are imposed on other forms of legislation, and they are the sole restraints on the legislative power of control of municipal corporations, except the power of public opinion and the power of the people, expressed through their votes. As is said by Judge Cooley: "If the legislative action in these cases operates injuriously to the municipalities or to individuals,

[44] Foote v. City of Cincinnati, 11 Ohio 408.

[45] Thus, where Laws of New Hampshire, 1881, ch. 255, §§ 1, 3, 11, provided that an amendment of the charter of the city of Concord should not become a law unless the city government or the inhabitants of the city should by "a majority vote of the legal voters present and voting thereon by ballot determine to adopt the same;" and at a meeting of the board of aldermen six of the seven members were present, three of whom voted in the affirmative on the question and three refused to vote, it was held that the amendment was legally passed: Attorney-General v. Shepard, 62 N. H. 383. See also, Winn v. Board of Park Com'rs, 12 Ky. L. 339; s. c. 14 S. W. 421; §§ 49, 54, 56, 88, 89, ante.

[46] Taylor v. Commissioners &c., 2 Jones Eq. (N. C.) 141. In this case the assent of the city of New Berne to an amendment of its charter was inferred from the election by its citizens of legislators who made the adoption of the amendment an issue in their canvass, and were elected as favoring the amendment. See also, § 78, ante. Failure of clerk to record amendment does not affect the validity thereof: State v. Doherty, 16 Wash. 382; s. c. 47 Pac. 958; 58 Am. St. 39.

the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to to right through the ballot-box all these wrongs."[47] In considering whether an act amending or repealing a municipal charter is constitutional or unconstitutional, the same criteria are to be applied as in considering other legislation. If such an act impairs the obligation of a contract; if it deprives any person of his private property without due process of law; in short, if it violates any provision of the federal constitution or of the constitution of the state by the legislature of which it is enacted, it is unconstitutional and void, as all other legislation would under like circumstances be unconstitutional and void.

§ 117. (b) **Special legislation.**—It is prescribed by the constitutions of several of the states that no special or local law shall be enacted affecting municipal corporations. This prohibition has been held in New Jersey to apply to a law altering the ward limits of a city and changing the time of election of certain of the municipal officers.[48] The Pennsylvania constitution prohibits the passage of any law creating, renewing or extending the charter of more than one corporation. An act enlarging the powers of several municipal corporations was not considered unconstitutional under this prohibition.[49] In Ohio and Kansas, statutes extending or defining the corporate limits of the municipality have been declared to be within the constitutional prohibition of special acts.[50] A curious instance of an attempt to evade this prohibition is to be found in an Ohio statute which allowed certain privileges to cities having at the last federal census a population of sixteen thousand five hundred and twelve. The city of Akron was the only city in the state to which the federal census had given that exact figure of population, and the statute was

[47] Cooley Const. Lim. (6th ed.) 230.

[48] State v. Mayor &c., 40 N. J. L. 550; s. c. 29 Am. R. 266. Under the same prohibition it has been held that where a general statute is enacted, applying to all cities in the state, all special laws inconsistent therewith are repealed by the general repealing clause of the statute, as otherwise the statute would not apply to all cities and would, therefore, be unconstitutional as special local legislation affecting municipalities: State v. City Council &c., 50 N. J. L. 87; s. c. 11 Atl. 137; 17 Am. & Eng. Corp. Cas. 638. But a city charter may, in New Jersey, be repealed by a special act: State v. Steen, 43 N. J. L. 542. See also, § 44, ante.

[49] Moers v. City of Reading, 21 Pa. St. 188.

[50] State v. City of Cincinnati, 20 Ohio St. 18; Wyandotte City v. Wood, 5 Kan. 603; City of Topeka v. Gillett, 32 Kan. 431; s. c. 4 Pac. 800; 23 Am. L. Reg. (N. S.) 778, and a valuable note (p. 785) by Frank P. Pritchard, Esq., on the general topic of local and special legislation.

very properly declared unconstitutional as being special legislation.[51]

§ 118. (c) **Vested rights—Impairment of obligation of contracts—Recognition by constitution.**—Where the amendatory or repealing acts affect vested rights of creditors, the right of private property, or the obligation of contracts, they must be closely inspected to see that they are not avoided by the restrictions imposed by the constitution of the United States and of the several states upon such legislation. For a detailed statement of the learning on these difficult and obscure points, reference is made to a subsequent chapter.[52] As was declared in a Texas case, the repeal of a municipal charter can not deprive of their vested rights those to whom the municipality is under obligation.[53] But if the constitution makes mention of a municipal corporation and recognizes it as such, it is not thereby secured against legislative control.[54] And it has been held in numerous cases in Indiana that a provision in the state constitution continuing in existence certain municipal corporations until their characters were "modified" or "repealed" by the legislature did not prohibit amendments to charters so as to enlarge territorially or otherwise the jurisdiction of the corporate authorities.[55] Repeal of the old charter by the adoption of a new one, providing that all existing laws, resolutions and ordinances should remain in force until repealed or modified, continues in force only such as are in consonance with the new charter.[56] All rights, liens and liabilities under the old charter continue under the new as existing at the time the new charter goes into effect.[57] Where an original contract has been impaired by an amendment to the charter, the corporation only has a right to complain.[58] Where a charter reserved the power to amend by the legislature, and subsequently by an act of the legislature certain reservoir property was exempted from city, county and state taxes, and subsequently another statute was passed subjecting the property theretofore exempt to taxation, it was held that subjecting the property to taxation was not in violation of the federal constitution in relation to impairing the obligation of contracts: the legislation did not constitute a contract.[59]

[51] State v. Anderson, 44 Ohio St. 247; s. c. 6 N. E. 571.

[52] See chapter on Legislative Control, post.

[53] Morris v. State, 62 Tex. 728.

[54] Mayor &c. v. State, 15 Md. 376; s. c. 74 Am. D. 572.

[55] Wiley v. Corporation of Bluffton, 111 Ind. 152; s. c. 12 N. E. 165, and cases there cited.

[56] Baader v. Town of Cullman, 115 Ala. 539; s. c. 22 So. 19.

[57] Board &c. v. Mason &c. Co., 100 Ky. 48; s. c. 18 Ky. L. 543; 37 S. W. 290.

[58] O'Phinney v. Trustees &c. (Md.), 42 Atl. 58.

[59] Covington v. Kentucky, 173 U. S. 231; s. c. 19 S. Ct. 383.

§ 119. **(d) Title of amendatory or repealing acts.**—The constitutions of many states provide that no statute shall embrace more than one object, which shall be clearly expressed in its title. Legislative acts amending or repealing municipal charters are, of course, obnoxious, along with other legislation, to this provision. The object of such provision is, of course, to enable legislators to see at a glance the general scope of the act which they are called upon to pass, and thus to prevent the passage of vicious legislation through the inattention of the law-giving body. It is evident that this object will be attained if the title of the act is sufficiently particular to show the general object and effect of the statute, even though details may be omitted from the title. This is well illustrated by a Minnesota case. The constitution of Minnesota contained such a provision. A special law entitled "An act to define the boundaries of and establish a municipal government for the city of Duluth," by repealing a former act extinguished a village organization and annexed its territory to the city. The constitutionality of the act was attacked on the ground that its title did not comply with the constitutional requirement. The courts upheld the statute, and in the opinion it was said: "It would be impracticable to require all these minor subjects to be expressed in the title: all that is required is that they and the provisions in respect to them shall be germane to the subject expressed in the title; such as have a just and proper reference thereto; such as by the nature of the subject indicated are manifestly appropriate in that connection. It could not be required that every other law repealed by implication because of repugnancy or inconsistency shall be mentioned in the title of the new act."[60]

§ 120. **The same subject continued.**—The constitution of Wisconsin provides that local and private acts "shall not embrace more than one subject and that shall be expressed in the title." It has been decided in that state that amendments to the charter of the city of Milwaukee are not local or private acts within the meaning of the constitutional provision.[61] But under a similar provision in the constitution of Illinois it was held that a statute entitled "An act to repeal certain acts therein named," by which the previous acts of incorporation of a city were repealed, and the former city reincorporated into a town, was unconstitutional, on the ground that the repealing portion of the act was alone designated by the title, and

[60] State v. Gallagher, 42 Minn. 449; s. c. 44 N. W. 529; State v. County Com'rs &c., 23 Fla. 483; s. c. 3 So. 193; McGurn v. Board of Education, 133 Ill. 122; s. c. 24 N. E. 529.

[61] Thompson v. City of Milwaukee, 69 Wis. 492; s. c. 34 N. W. 402.

that the subsequent clauses were not designated in the title according to the requirement of the constitution.[62] In an Iowa case a statute entitled "An act to amend the act to incorporate the city of Muscatine," extended the limits of that city, which limits had been defined by the original act of incorporation. The courts held that the object of the statute was sufficiently set forth in its title and that the act was not unconstitutional.[63] The constitution of Georgia contained a clause providing that no law or ordinance should be passed "which refers to more than one subject-matter or contains matter different from what is expressed in the title thereof." A subsequent statute entitled "An act to prescribe the manner of incorporating towns and villages," which contained a clause amending existing charters, was held to be void, as not complying with the constitutional requirement.[64]

§ 121. Forfeiture of charter in England.—The charter of an English municipal corporation can be declared forfeited by the courts for misuser or non-user on the part of the corporation of the provisions of its charter.[65] This forfeiture of charter and consequent dissolution of the municipality is accomplished by quo warranto and scire facias proceedings, as in the case of private corporations. The former proceeding is in form a criminal but in its essence a civil proceeding, and was originally used where there was a defect in incorporation whereby the municipality had merely a de facto corporate existence and could not legally exercise its powers. In later times, however, it was used not only as an appropriate means for testing the right to exercise corporate franchises, but also as the proper remedy for the abuse thereof. The writ of scire facias, on the other hand, is properly used where the municipality is properly incorporated, but has misused or non-used its franchises.[66]

[62] People v. Mellen, 32 Ill. 181.

[63] Morford v. Unger, 8 Iowa 82. In the same state a statute entitled an amendment to a municipal charter was declared void as containing objects not mentioned in the title: Williamson v. City of Keokuk, 44 Iowa 88.

[64] Ayeridge v. Commissioners, 60 Ga. 404. See also, Brieswick v. Mayor &c., 51 Ga. 639, where a statute entitled "An act to consolidate and amend the several acts incorporating the city of Brunswick and for other purposes" therein mentioned was also declared unconstitutional and void on the same ground. See also, 1 Dillon Munic. Corp. (4th ed.), § 51, where many cases on this point are collected.

[65] Willcock Corp. 325.

[66] For a discussion of this subject and of the authorities relating thereto, with especial reference, however, to private corporations, see 1 Beach Priv. Corp., § 53.

§ 122. The same subject continued.—The English doctrine that the charters of municipal as well as of private corporations are liable to forfeiture by quo warranto and scire facias proceedings arises from the fact that there is an implied condition upon the grant of any charter, public or private, that the franchises thereof shall not be neglected or abused.[67] It is conceded that this doctrine applies to private corporations in this country.[68] But as will be shown in the succeeding sections, the charters of municipal corporations can not in the United States be declared forfeited by the courts for any cause.

§ 123. Instances of forfeiture of charter under English law.—The boroughs and cities of England had always been the centers of intellectual activity, and consequently of restiveness, under the attempted tyranny of the Tudors and the Stuarts. When Charles II was restored to the throne he took measures to quell the rebellious cities, and notably the great capital of London, by attacking the charters which were the source of their independence. A servile judiciary subserved his aims, and on frivolous grounds the charter of London was declared forfeited.[69] The charter was only restored to the city upon conditions which virtually vested in the crown the power of appointing the municipal officers. London was not alone in this

[67] 1 Dillon Munic. Corp., § 165; citing Bl. Com. 485; 2 Kyd Corp. 447; Willcock Corp. 325; Taylors of Ipswich v. Sherring, 1 Rol. 4, 5; Rex v. Grosvenor, 7 Mod. 198; Smith's Case, 4 Mod. 53, 55, 58; Rex v. Saunders, 3 East 119; Mayor &c. v. Henley, 2 Cl. & F. 331; Rex v. Inhabitants &c., 13 East 220; Priestley v. Foulds, 2 Scott N. R. 205, 225; Attorney-General v. Corporation of Shrewsbury, 6 Beav. 220. Where it is clear that the object of the quo warranto against an individual member of the corporation is to call in question the validity of the charter granted to it by the crown, the court will refuse it: Reg. v. Taylor, 11 A. & E. 949. The writ will not, however, be refused merely because the granting it may or even will dissolve the corporation: Rex v. White, 5 A. & E. 613; Rex v. Parry, 6 A. & E. 810, 820.

[68] 1 Beach Priv. Corp., § 45; citing People v. Kingston &c. Road Co., 23 Wend. (N. Y.) 193; s. c. 35 Am. D. 551 and note; State v. Commercial Bank, 13 Sm. & M. (Miss.) 569; s. c. 53 Am. D. 106; Chesapeake &c. Canal Co. v. Baltimore &c. R. Co., 4 Gill & J. (Md.) 1; People v. President &c., 9 Wend. (N. Y.) 351; Penobscot &c. Corp. v. Lamson, 16 Maine 224; Commonwealth v. Commercial Bank &c., 28 Pa. St. 383. The exercise of this power in this country is exclusively vested in the courts; because a legislature can not, as a rule, declare a private charter forfeited: 1 Beach Priv. Corp., § 45, and cases cited.

[69] 1 Dillon Munic. Corp., § 8; citing Rex v. Mayor &c., Mich. 33 Car. 2; s. c. 2 Show. 262. See also, Pulling, Laws &c. of London, 14; Norton Comm. on Hist. &c of London, book 1, ch. 10; The Lease of the City of London, 8 How. State Trials 1340.

predicament. Judge Dillon states that eighty-one quo warranto informations were brought against English municipal corporations by Charles II and James II. These efforts of tyranny extended to the American colonies, which were at that early time vigorous in their opposition to unconstitutional despotism. The charters of Massachusetts, of Rhode Island and of Connecticut were abrogated. But after the revolution these wrongs were righted, and the charters of all corporations forfeited during the reigns of Charles II and James II were restored by act of parliament.[70]

§ 124. The charter of a municipal corporation in the United States can not be forfeited by judicial action.—The English law allowing the forfeiture of municipal charters by quo warranto and scire facias proceedings has no place in the American system of jurisprudence. The power to dissolve a municipal corporation is vested wholly and exclusively in the legislative branch of our government.[71] This distinction seems to arise from the fact that the English municipal corporation was, in the incipiency of its existence as a corporation, a body of burgesses within the borough—a close corporation which controlled the town but was not itself the town. This charter of this close corporation, in many respects conducted for private advantage although performing at the same time the function of a governing body over the town or city, was considered to be subject to forfeiture for wilful misuser or non-user in regard to matters which went to the essence of the contract between it and the crown, just as a private corporation is subject to such forfeiture. The same tacit condition was considered to be annexed to the charters of these corporations that is annexed, as is everywhere conceded, to the charters of private corporations; that is, that the corporation shall be subject to dissolution, by forfeiture of its charter effected through regular judicial proceedings, for wilful misuser or non-user of the franchises of that charter.

§ 125. The same subject continued.—But in the United States our municipalities are free from any such vestige of an earlier

[70] 1 Dillon Munic. Corp., § 8; 2 Chandl. Com. Debs. 316; 1 Stephen English Const., ch. 7, p. 455; Macaulay Hist. of Eng., vol. 3, ch. 15.

[71] Mobile v. United States, 116 U. S. 289; s. c. 6 S. Ct. 398; Meriwether v. Garrett, 102 U. S. 472; Welch v. Ste. Genevieve, 1 Dillon 130; Attorney-General v. City of Boston, 123 Mass. 460; Attorney-General v. City of Salem, 103 Mass. 138; Buford v. State, 72 Tex. 182; s. c. 10 S. W. 401; Harris v. Nesbit, 24 Ala. 398. Non-user of corporate powers is not a forfeiture of corporate existence: State v. Stevens, 21 Kan. 210; s. c. (annotated) 18 Am. L. Reg. (N. S.) 43, 46.

stage of development. The American municipal corporation is simply and purely a strictly public corporation. It is a corporation of citizens, for citizens and by citizens. Its sole object is local government. Being maintained, therefore, only for the public advantage, it is manifestly unjust and even impossible that the charters of our municipal corporations should be forfeited by judicial proceedings. To give such a power to the judiciary would be to make them co-ordinate with the legislature in their control of local government and local legislation. The illegal acts of municipal officials can be avoided and enjoined by various methods of judicial procedure, but the charter itself being the creature of the legislature can be destroyed only by the same power that created. We have seen that the power of the legislature over municipal charters is unlimited except by constitutional limitations and by the power of the ballot-box. We may further add that this power of control has no rival, and that neither the judicial nor the executive departments of our government can create nor destroy a municipality, which is a subdivision of the state government. There are to the knowledge of the writer no cases in which this exclusive control of the legislature has been successfully questioned.[72]

[72] See, upon this point, 1 Dillon Munic. Corp., § 168; 2 Dillon Munic. Corp., § 896; State v. Stevens, 21 Kan. 210; s. c. (annotated) 18 Am. L. Reg. (N. S.) 43, 46. Regularity of incorporation can not be attacked collaterally: §§ 57, 80, ante. The effect of dissolution of corporations by legislative action will be fully treated in the subsequent chapter on Partition and Dissolution.

CHAPTER V.

MEMBERSHIP AND CITIZENSHIP—PERSONAL LIABILITY OF MEMBERS OF THE CORPORATION.

SECTION

126. Definitions — Membership — Citizenship.
127. Qualifications for membership in English municipal corporations.
128. The same subject continued.
129. Qualifications for membership in American municipal corporations.
130. Citizenship in England.
131. The same subject continued.
132. Citizenship in the United States.
133. Natural citizens.
134. The same subject continued.
135. Naturalized citizens.
136. The same subject continued.
137. Right of naturalized citizens to hold and receive lands.
138. The status of Chinese before the law.
139. The status of American Indians before the law.
140. Privileges and immunities of citizens.
141. The same subject continued.
142. Rights of citizens.
143. The same subject continued.
144. Personal liability of members of the corporation.
145. The same subject continued—Russell v. The Men of Devon.
146. Personal liability of members of public quasi-corporations in New England.
147. The same subject continued.
148. Beardsley v. Smith—(a) The reason for the New England doctrine of personal liability of members.
149. (b) The doctrine in England.
150. (c) The doctrine in Massachusetts and Maine.
151. (d) The doctrine in Connecticut.
152. Limitations upon the personal liability of members of New England public quasi-corporations.

§ 126. Definitions — Membership — Citizenship.—Membership is the state of being a member.[1] Citizenship is the state of being vested with the rights and privileges of a citizen.[2] A member is an individual of a community or society. Every citizen is a member of the state or body politic. So the individuals of a club, a corporation, or confederacy, are called its members.[3] A citizen is strictly a member of a commonwealth (civitas), possessing all the rights which can be enjoyed or exercised under its fundamental laws.[4] A citizen is the native of a city, or an inhabitant who enjoys the freedom and privileges of the city in which he resides; the freeman of a city, as dis-

[1] Webster Dict.
[2] Webster Dict.
[3] Webster Dict.
[4] Burrill Law Dict. (2d ed.).

tinguished from a foreigner, or one not entitled to its franchises; in the United States, a person, native or naturalized, who has the privilege of exercising the elective franchise, or the qualifications which enable him to vote for rulers, and to purchase and hold real estate;[5] any person who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people;[6] a free inhabitant, born within the United States, or naturalized under the laws of congress.[7]

§ 127. **Qualifications for membership in English municipal corporations.**—Before the passage of the statute known as the Municipal Corporations Act of 1882, the qualifications for members or officers of municipal corporations depended upon the charter, usage or by-laws of the particular corporation: the usual qualifications being that the person claiming to be admitted to the freedom of the corporate town should be the son of a freeman, or should have served an apprenticeship to a freeman, or—in some instances—married his daughter, or acquired the privilege by gift or franchise.[8] But this was changed by the said act of 1882, and under it no person is entitled to be enrolled as a burgess unless he is qualified as follows: (a) Is of full age;[9] and (b) is on the 15th of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several,[10] of any house,[11] warehouse, counting-house, shop or other building,[12] in this act referred to as qualifying property[13] in the borough.

[5] Webster Dict.

[6] 3 Story on Const. 1687 (1st ed.).

[7] 2 Kent Com. 258, note.

[8] 1 Dillon Munic. Corp. (4th ed.), § 36, note.

[9] It should seem from these words that it is sufficient if the person seeking to be enrolled were of full age at the time of the revision of the lists. But see Hargreaves v. Hopper, L. R. 1 C. P. D. 195.

[10] A joint occupation gives the municipal franchise: Reg. v. Mayor &c., L. R. 4 Q. B. 114.

[11] This may include part of a house, when separately occupied: Municipal Corporations Act of 1882, § 31.

[12] See Powell v. Farmer, 18 C. B. (N. S.) 168; Powell v. Boraston, 18 C. B. (N. S.) 175; Re Creek, 3 B. & S. 459; Reg. v. Mayor &c., 9 Ad. & El. 670; Rex v. Sefton, Russ. & Ry. 202; In re Evans, 9 Ad. & El. 679. Where a burgess occupies a "house," and is described as occupying a "counting-house," his name must be expunged from the burgess roll: Reg. v. Mayor &c., 44 L. J. Q. B. 82. In cases where a house is let out to separate tenants, and each tenant has complete control over his portion, see Rex v. Trapshaw, 1 Leach (4th ed.) 427; Rex v. Bailey, 1 Mood. C. C. 23; Rex v. Carroll, 1 Leach (4th ed.) 237; Reg. v. Mayor &c., 9 Ad. & El. 670; Cook v. Humber, 11 C. B. (N. S.) 33; s. c. 31 L. J. C. P. 73; Wilson v. Roberts, 11 C. B. (N. S.) 50; s. c. 31 L. J. C. P. 78.

[13] This property need not be the

§ 128. The same subject continued.—This statute further provides that no person shall be entitled to be enrolled as a burgess unless he "(a) has during the whole of those twelve months resided in the borough or within seven miles thereof;[14] and (b) has been rated[15] in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate; and (c) has on or before the twentieth of the same July paid[16] all such rates,[17] including borough rates (if any), as have become payable by him in respect of the qualifying property[18] up to the then last preceding fifth of January." Every person so qualified shall be entitled to be enrolled as a burgess, unless he "(a) is an alien; or (b) has within the twelve months aforesaid received union or parochial relief or other alms; or (c) is disentitled under any act of parliament."[19]

§ 129. Qualifications for membership in American municipal corporations.—The question whether a person is a member of a public corporation, strict or quasi, is in this country determined by the residence of the person in question. If he lives within the limits of the

same during the twelve months: See § 33, Rawlinson Municipal Corporations Act of 1882 (8th ed.), p. 118.

[14] As to the mode in which this distance is to be measured, see Rawlinson Municipal Corporations Act of 1882 (8th ed.), § 231.

[15] It is now established that, in order to constitute a good rating, the name of the party intended to be charged must appear on the rate: Moss v. Overseers of St. Michael, 7 Man. & G. 72. See also, Lord Mansfield's reasons in the judgment in Rex v. St. Luke's Hospital, 2 Burr. 1053, 1063; and the cases collected on this subject in Elliott Registration (2d ed.) 190; and Rex v. Tripp, M. T. 1836; Glover Corp. 693.

[16] Payment by another person acting as a volunteer, and without any authority from the person liable, is not sufficient: Reg. v. Mayor &c., 10 Ad. & El. 66. But where the payment is made by the landlord in consequence of an agreement between him and the tenant, by which the tenant was to pay additional rent in respect thereof, such payment is sufficient: Wright v. Town Clerk of Stockport, 5 Man. & G. 33; Moger v. Escott, L. R. 7 C. P. 158; Cook v. Luckett, 2 C. B. 168; Hughes v. Overseers of Chatham, 5 Man. & G. 54. The decisions on settlement cases accord with this view: Rex v. Axmouth, 8 East 383; Rex v. Oakehampton, Burr. S. C. 5; Rex v. Bridgewater, 3 T. R. 550.

[17] See Rawlinson Municipal Corporations Act of 1882 (8th ed.), §§ 144, 197. The non-payment of an illegal rate does not disqualify the party: Reg. v. Mayor &c., 7 Q. B. 908. As to the payments of compositions for poor-rate under local acts, see Reg. v. Mayor &c., 20 L. J. Q. B. 281.

[18] See Flatcher v. Boodle, 18 C. B. (N. S.) 152.

[19] Municipal Corporations Act of 1882, § 9.

corporation he is considered a member of the corporation; if he lives without those limits he is not a member. The decision of the question is not affected by the wishes either of the person or of the corporation. In the case of private corporations the question is of course decided in an entirely different manner: one who holds stock in the corporation is considered a member.[20]

§ 130. **Citizenship in England.**—Natural citizenship is created in England by birth within the allegiance of the king. By a statute of the reign of Edward III[21] it was provided that children "which henceforth shall be born out of ligeance of the king, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the king of England, shall have and enjoy the same benefit and advantage, to have and bear inheritance within the same ligeance as the other inheritors aforesaid in time to come, so also that the mothers of such children passed the sea by the license and will of their husbands." The question whether this statute was introductory of a new rule or simply declaratory of the previous law was considered in a New York case, and the conclusion was reached "that it is perhaps not easy to determine from the statute itself, taken in connection with its history, whether it was in truth an enabling or a declaratory act."[22] Judge Selden, however, continued his consideration of the question by saying: "Principles, however, have since the statute been thoroughly settled, which is my view and decision of the question. The subject of alienage was very elaborately examined in Calvin's Case.[23] Among the principles settled in that case and which have remained unquestioned since are these: (1) That natural allegiance does not depend upon locality or place; that it is purely mental in its nature, and can not, therefore, be confined

[20] Oakes v. Hill, 10 Pick. (Mass.) 333, 346; Overseers of Poor &c. v. Sears, 22 Pick. (Mass.) 122, 130. "In all quasi-corporations, as cities, towns, parishes, school districts, membership is constituted by living within certain limits:" Per Shaw, C. J., in Overseers of Poor &c. v. Sears, 22 Pick. (Mass.) 122, 130; Hill v. City of Boston, 122 Mass. 344, 356; s. c. 23 Am. R. 332. In Oakes v. Hill, 10 Pick. (Mass.) 333, 346, Judge Morgan says:—"When a man moves into a town he becomes a citizen there (if possessed of the requisite qualifications as to age, etc., and if he remains the requisite length of time), whatever may be the desire of himself or the town." See also, Dillon Munic. Corp. (4th ed.), chs. 2 and 3; People v. Canaday, 73 N. C. 198; s. c. 21 Am. R. 465.

[21] 25 Edw. III, ch. 2.

[22] Ludlam v. Ludlam, 26 N. Y. 356, 363.

[23] 7 Co. 1; 6 James I.

within any certain boundaries; or, to use the language of Coke, that 'ligeance, and faith and truth, which are her members and parts, are qualities of the mind and soul of man, and can not be circumscribed within the predicament of ubi.' (Page 76.) (2) That it is not sufficient, in a plea of alienage, to aver that the plaintiff was born out of the kingdom or out of the jurisdiction of the king, but every such plea must aver that the plaintiff is not of the allegiance of the king; and judgment was given for the plaintiff in Calvin's Case 'for that the plea in this case doth not refer faith or liegeance to the king indefinitely and generally, but limiteth and restraineth faith and liegeance to the kingdom.' (Id., p. 10a.) (3) That allegiance and protection—namely, the rights and the duties of citizenship—are reciprocal, the one being the consideration for the other. (Id., p. 6a.) (4) That a British subject, although residing abroad, still owes allegiance to the king of England."[24]

§ 131. **The same subject continued.**—From his consideration of the cases and authorities the learned judge finally reaches the conclusion "that the children of English parents, though born abroad, are nevertheless regarded by the common law as natural-born citizens of England." He continues: "Now upon what ground can allegiance in such cases be claimed? If natural allegiance or allegiance by birth does not depend upon boundaries or place, as Calvin's Case asserts, upon what does it depend? There can be but one answer to the question. It is impossible to suggest any other ground for the obligation than that of parentage. It must, I apprehend, be transmitted from the parents to the child or it could not exist. This being then the nature of permanent allegiance, it follows that the king of England may properly claim allegiance from the children of his subjects wherever born. If, then, the child of English parents, though born abroad, is, subditus natus, a born subject of the king, he must also be a born citizen of the kingdom. Allegiance and citizenship are, as we have seen, correlative terms, the one being the consideration of the other. So long, therefore, as the parents continue to owe allegiance to the crown of England, so long will their children, by the rules of common law, whether born within or without the king-

[24] Brooke Abridgment, tit. Denizen, 21; Roy v. Eaton, Litt. 23; Collingwood v. Pace, 1 Vent. 413, 422; 1 Jenk. Cent., case 2; Bacon v. Bacon, 3 Cro. Car. 601; 2 Phillimore Int. Law 4; Halleck Int. Law, ch. 29, § 4, p. 698; Ludlam v. Ludlam, 26 N. Y. 356, 364. The learned judge continued his collation and analogies of authorities, referring to Cobbledike's Case, cited in Calvin's Case, p. 9b.

dom, owe similar allegiance, and be entitled to the corresponding rights of citizenship."[25]

§ 132. **Citizenship in the United States.**—There are in the United States two classes of citizens—natural and naturalized citizens. Citizenship of the former class is created by the birth of the citizen within the jurisdiction of the United States. Citizenship of the latter class is created by the performance of certain requirements defined by statute. The naturalized citizen is from the time of naturalization a full-fledged citizen, entitled to all the rights, privileges and immunities of a natural citizen, saving certain disabilities which relate back to the period during which he was an alien. It is conceded learning that birth within the jurisdiction of the United States creates natural citizenship whether the parents of the citizen are aliens or citizens.[26] To this rule the aboriginal Indians of this country furnish an exception that is, however, only apparent. A child of Indian parents born in this country is not considered to have been born within the jurisdiction of the United States, and is not therefore a citizen.[27]

§ 133. **Natural citizens.**—Where a person is born within the jurisdiction of the United States he is a natural citizen.[28] Likewise a person born in a foreign country and out of the jurisdiction of the United States is a citizen of the United States if at the time of his birth his father was a citizen thereof.[29]

[25] Ludlam v. Ludlam, 26 N. Y. 356, 365.

[26] Lynch v. Clark, 1 Sandf. Ch. (N. Y.) 584; In re Look Tin Sing, 21 Fed. 905; s. c. 17 Chic. Leg. N. 57. In the latter case a child born in the United States of alien Chinese parents was declared to be an American citizen. See § 138, post.

[27] See post, § 139.

[28] Fourteenth Amend. to Fed. Const.; In re Look Tin Sing, 21 Fed. 905; s. c. 17 Chic. Leg. N. 57; Lynch v. Clarke, 1 Sandf. Ch. (N. Y.) 583, 639.

[29] U. S. Rev. Stat., § 1993; Ludlam v. Ludlam, 26 N. Y. 356; Inhabitants &c. v. Inhabitants &c., 58 Maine 353. In the absence of any law of the United States governing the particular case, the question whether one born out of the United States is a citizen is to be determined by the common law as it existed, irrespective of English statutes, at the adoption of the federal constitution. It was accordingly held that where a citizen of the United States went to Peru at the age of eighteen years with the intention of indefinite continuance there for the purpose of trading, but took no steps to be naturalized in Peru or to indicate an intention or a permanent change of domicile, otherwise than as before stated, his child, born to him in Peru of a wife a native of that country, is a citizen of the United States: Ludlam v. Ludlam, 26 N. Y. 356.

§ 134. The same subject continued.—Where a citizen of the United States marries an alien woman who might be naturalized, she becomes a citizen;[30] and if the husband is naturalized after marriage, the wife becomes a citizen.[31] In cases where a citizen leaves this country and either takes with him a son born in the United States or has one born abroad, and either the father or son elects to and does become a subject of the country to which they have emigrated, they both become aliens, and neither one can inherit real property in the United States.[32]

§ 135. Naturalized citizens.—In the United States citizenship may be acquired by naturalization.[33] Under the United States statutes an applicant for admission to citizenship must possess certain qualifications and comply with certain rules before he is entitled to admission to citizenship.[34]

[30] U. S. Rev. Stat., § 1996.

[31] 10 U. S. Stat. at Large, p. 604, § 2; Kelly v. Owen, 7 Wall. 496; Burton v. Burton, 1 Keyes (N. Y.) 359; White v. White, 2 Met. (Ky.) 185.

[32] Shanks v. Dupont, 3 Peters 242; Jackson v. White, 20 Johns. (N. Y.) 313; Orser v. Hoag, 3 Hill (N. Y.) 79; Kilham v. Ward, 2 Mass. 236. The division of an empire works no forfeiture of previously vested property rights: Kelly v. Harrison, 2 Johns. Cas. (N. Y.) 29; Jackson v. Lunn, 3 Johns. Cas. (N. Y.) 109. A person born in the United States who left the country before the declaration of independence and never returned became thereby an alien, and incapable of subsequently taking land by descent: Inglis v. Sailors' Snug Harbor, 3 Peters 121. See also, Fairfax v. Hunter, 7 Cranch 603; Jackson v. Burns, 3 Binn. (Pa.) 75; Orr v. Hodgson, 4 Wheat. 453; BHght v. Rochester, 7 Wheat. 535.

[33] Congress controls exclusively the rules which govern naturalization: Houston v. Moore, 5 Wheat. 1. As to the time when the power of naturalization takes effect, see Chirac v. Chirac, 2 Wheat. 259; United States v. Villato, 2 Dallas 370.

[34] These requirements are defined by statute as follows:—(1) "Any alien, except Chinese, may be naturalized and become a citizen of the United States on the following conditions:—The applicant shall declare on oath or affirmation before some state court of record, having a seal and clerk, and having common-law jurisdiction, or before a United States district or circuit court, or before a clerk of any of the said courts, two years at least before his admission, that it is his intention to become a citizen of the United States, and to renounce forever his allegiance to his own sovereignty, which must be in peace with the United States at the time. (2) At his final admission to citizenship he shall declare on oath or affirmation before some of the courts aforesaid that he will support the United States constitution, and that he renounces all allegiance to any foreign sovereign, and especially to his own, whereof he was subject before his application for citizenship. (3) He must prove by at least two witnesses who are citizens that he has resided within the United States five years at least and within the state or territory where the court is located at least one year; that dur-

§ 136. The same subject continued.—Congress has made special provisions by which alien seamen may become naturalized citizens. Under the act he must first declare his intention of becoming a citizen before the proper court, and then serve three years on a United States merchant vessel.[35] A clerk has no power to admit a person to citizenship: the admission must be granted by the court, as it is a judicial act.[36] But the applicant may make his declaration of intention to become a citizen before the recording officer of a court of record, and it is properly receivable by the clerk, as he acts in that capacity ministerially and not judicially.[37]

ing that time he has been a good moral person, attached to the principles of this government, and is well disposed in this regard. (4) He must renounce all titles to nobility, if he has any. (5) Any alien (except a Chinese) who is a minor, who shall have resided within the United States three years next preceding his arriving at his majority, and who shall continue to reside therein at the time of making application for citizenship, may, after reaching his majority, and having resided in the United States at least five years, including the three years of his minority, be given citizenship without any preliminary declaration. (6) Any alien (except a Chinese) who is twenty-one years of age or over, enlisting in the armies of the United States, either in the regular or volunteer, and who shall be honorably discharged therefrom, can be admitted to citizenship without the preliminary declaration of his intentions, but he must prove one year's residence in the United States. (7) The children of parents duly naturalized, being under the age of twenty-one years at the time of such naturalization, shall, if residing in the United States, be considered as citizens. (8) If an alien who shall have declared his intentions shall die before he is actually naturalized, his widow and children shall be considered citizens on taking the oath prescribed by law. (9) No alien who shall be a citizen, denizen or subject of any country, state or sovereign with whom the United States shall be at war at the time of his application shall be then admitted to be a citizen of the United States: U. S. Rev. Stat., tit. 30.

[35] Act of congress of 1872, § 29; 17 Stat. at Large 268.

[36] McCarthy v. Marsh, 5 N. Y. 263; The Acorn, 2 Abb. 434; Clark's Case, 18 Barb. (N. Y.) 444.

[37] Butterworth's Case, 1 Woodb. & M. 323; State v. Whittemore, 50 N. H. 245; Ex parte Cregg, 2 Curtis 98. As to naturalization of a married woman without her husband's consent, see Priest v. Cummings, 16 Wend. (N. Y.) 617. The necessary witnesses must be present in court and examined there openly and publicly; and affidavits taken outside of the court as to the applicant's character and residence are not admissible: In re ——, An Alien, 7 Hill (N. Y.) 137. Where a father becomes naturalized, and at that time has a son residing in the United States, but who is a minor, the son becomes a citizen by reason of his father's naturalization: State v. Penney, 10 Ark. 621. For the privileges and immunities to which a naturalized person is entitled, see 2 Kent Com. 66.

§ 137. Right of naturalized citizens to hold and receive lands.—Where a person becomes naturalized he has the same right as a natural-born citizen to hold, inherit and receive lands, but the capacity to take by descent must exist at the time the descent happens.[38] Where an alien, having acquired lands by purchase, is afterward naturalized before office found, his title becomes thereby confirmed, so that he may hold even as against the state. Otherwise where his claim is by descent.[39]

[38] People v. Conklin, 2 Hill (N. Y.) 67; Heeney v. Trustees &c., 33 Barb. (N. Y.) 360; Vaux v. Nesbit, 1 McC. Ch. (S. C.) 352. M., an American citizen, died seized of certain lands in 1779, leaving no lawful issue and no blood relatives, save such as were aliens. By his will he devised all his real estate to his wife, also an American citizen, to hold during her life, remainder to his two sisters and seven nephews and nieces, as tenants in common, in fee; empowering his executors to sell the lands after his wife's death, and divide the proceeds equally among the devisees in remainder. The will further provided that in case any of the devisees in remainder died, before such division, leaving lawful issue, the latter should take the share to which the parents, if living, would have been entitled. The devisees in remainder all died aliens prior to September, 1828, one of them (a nephew) leaving a son named E. E., who became naturalized September 3, 1828. The widow died in 1832. In ejectment by the people claiming the lands devised on the ground of their having escheated to the state, it was held that E. E. took no interest in them, either as devisee or heir, which could avail him as against the plaintiffs, and that the latter were entitled to recover. The fee was not in abeyance during the life of the widow, but the remainder vested in interest on the death of the testator; and though the devisees in remainder died before they were entitled to the possession, their estate would have descended had they left heirs capable of inheriting: People v. Conklin, 2 Hill (N. Y.) 67. Judge Bronson, in his opinion, says:—"Although the devisees in remainder were aliens, they could take lands by purchase, which includes a title by devise and any other form of acquiring the land by purchase;" and cites as supporting his view, Fairfax v. Hunter, 7 Cranch 603, 619; Vaux v. Nesbit, 1 McC. Ch. (S. C.) 352; 1 Powell Dev. (ed. 1838) 259. The learned judge further says:—"The statute of 1830 will not help E. E. because it was passed since the death of M.;" and cites Jackson v. Green, 7 Wend. (N. Y.) 333; Jackson v. Fitzsimmons, 10 Wend. (N. Y.) 9. And see People v. Irvin, 21 Wend. (N. Y.) 128.

[39] People v. Conklin, 2 Hill (N. Y.) 66. See also, Fairfax v. Hunter, 7 Cranch 603; Bradstreet v. Supervisors, 13 Wend. (N. Y.) 546; Lareau v. Davignon, 5 Abb. Pr. (N. S.) (N. Y.) 367; Overing v. Russell, 32 Barb. (N. Y.) 263; Munro v. Merchant, 28 N. Y. 9; Wadsworth v. Wadsworth, 12 N. Y. 376; Scanlan v. Wright, 13 Pick. (Mass.) 523; Wilbur v. Tobey, 16 Pick. (Mass.) 177; Foss v. Crisp, 20 Pick. (Mass.) 121; Smith v. Zaner, 4 Ala. 99. The naturalization must be complete: McDaniel v. Richards, 1 McC. (S. C.) 187.

§ 138. The status of Chinese before the law.—The Chinese form an exception to our naturalization laws. A Chinese person, not born in this country, can not become a citizen of the United States by naturalization.[40] A Chinese, however, if born within the limits of this country, even though of alien parents, is a citizen of the United States and of the state wherein he resides. This question was decided by Justice Field.[41] The learned judge held that birth within the jurisdiction of the United States conferred citizenship; that this rule was in force, except as to Africans and their descendants, before the passage of the fourteenth amendment, which was intended to abolish that exception.[42] In this respect the Chinese share that privilege which our laws bestow on all persons born within our dominion, except in the case of aboriginals of our country.

§ 139. The status of American Indians before the law.—The status of American Indians in this country is anomalous. Although born within the limits of the United States and subject to taxation and the other burdens of citizenship, they are yet debarred from enjoying any of its privileges. They are not considered to be within the fourteenth amendment of the federal constitution, which provides that "all persons born and naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside."[43] The Indian tribes

[40] In re Ah Yup, 5 Sawyer 155. See also, the United States statutes of 1882 and 1884, restricting Chinese immigration.

[41] In re Look Tin Sing, 21 Fed. 905; s. c. 17 Chic. Leg. N. 57.

[42] It is to be noted, however, that the children of Chinese ambassadors or persons otherwise employed in the service of the Chinese government are not citizens, though born in this country. This results from the familiar rule that the residence of an ambassador is considered a part of his own country: In re Look Tin Sing, 21 Fed. 905; s. c. 17 Chic. Leg. N. 57.

[43] Elk v. Wilkins, 112 U. S. 94; s. c. 5 S. Ct. 41. Here an Indian claimed the right to vote under the clause of the fourteenth amendment quoted in the text, and also under the fifteenth amendment, that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude." The court denied his right to vote on the ground that he was not subject to the jurisdiction of the United States within the meaning of the fourteenth amendment, and was not, therefore, a citizen of the United States. It was held that an Indian is a resident alien in a condition similar to that of the children of foreign ministers born in this country; that the Indian owes allegiance to his tribe and not to our government, and that he can become a citizen only by naturalization or by treaty. From this opinion Justice Harlan and Justice Woods dissented, contending that the Indian was within the purview of the four-

are regarded as alien peoples living within our boundaries, but not of us. And it is also held that the consent of the United States is necessary in order to enable the members of any tribe to become citizens of the United States by naturalization. They can not become naturalized citizens of their own motion without such consent, which must be expressed by treaty or statute.[44]

§ 140. Privileges and immunities of citizens.—Although a full discussion of the rights, privileges and immunities of citizens of the United States, as secured by the federal constitution and the constitutions of the several states, and defined by judicial interpretation of those constitutional provisions, is obviously beyond the scope and plan of this work, it will be well to indicate briefly the fundamental principles upon which these rights, privileges and immunities depend. "The citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."[45] "Although the precise

teenth and fifteenth amendments. See also, Crow Dog's Case, 109 U. S. 556; s. c. 3 S. Ct. 396; Cherokees v. Georgia, 5 Peters 1; New York Indians' Case, 5 Wall. 761; Hastings v. Farmer, 4 N. Y. 293; Pells v. Webquish, 129 Mass. 469.

[44] Wilson v. Wall, 6 Wall. 83, and cases cited in preceding note.

[45] Const. of United States, art. 4, § 2. Judge Washington discusses this provision as follows:—"What are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads:—Protection by the government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of every kind in the courts of the state; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the citizens of the other state,—may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens

meaning of 'privileges and immunities' is not very conclusively settled as yet, it appears to be conceded that the constitution secures in each state to the citizens of all other states the right to remove to and carry on business therein; the right, by the usual modes, to acquire and hold property, and to protect and defend the same in law; the right to the usual remedies for the collection of debts and the enforcement of other personal rights; and the right to be exempt in property and person from taxes or burdens which the property or persons of citizens of the same state are not subject to."[46]

§ 141. **The same subject continued.**—"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."[47] But it is an un-

of each state in every other state was manifestly calculated (to use the expression of the preamble of the corresponding provision in the old articles of confederation) 'the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union:'" Corfield v. Coryell, 4 Wash. C. C. 371, 380. The supreme court prefers to decide each case as it comes up, and will not define and describe those privileges in a general classification: Conner v. Elliott, 18 How. 591; McCready v. Virginia, 94 U. S. 391; Ward v. Maryland, 12 Wall. 418. See also, United States v. Cruikshank, 92 U. S. 542; Kimmish v. Ball, 129 U. S. 217; s. c. 9 S. Ct. 277; Lemmon v. People, 20 N. Y. 562; People v. Imlay, 20 Barb. (N. Y.) 68; Robinson v. Oceanic &c. Co., 112 N. Y. 315; s. c. 19 N. E. 625; 2 L. R. A. 636; Haney v. Marshall, 9 Md. 194; Petition of Bliss, 63 N. H. 135; State v. Lancaster, 63 N. H. 267; State v. Fosdick, 21 La. An. 434; State v. Gilman, 33 W. Va. 146; s. c. 10 S. E. 283; 6 L. R. A. 847; Crandall v. State, 10 Conn. 339, 340; State v. Medbury, 3 R. I. 138; People v. Thurber, 13 Ill. 554; Cincinnati &c. Assur. Co. v. Rosenthal, 55 Ill. 85; Jeffersonville &c. R. Co. v. Hendricks, 41 Ind. 48; People v. Phippin, 70 Mich. 6; s. c. 37 N. W. 888; Fire Department v. Helfenstein, 16 Wis. 136; People v. Coleman, 4 Cal. 46; Bradwell v. State, 16 Wall. 130; Bartemeyer v. Iowa, 18 Wall. 129; Fire Department v. Noble, 3 E. D. Smith (N. Y.) 441; Amy v. Smith, 1 Litt. (Ky.) 326; Campbell v. Morris, 3 Har. & McH. (Md.) 535, 554; Slaughter v. Commonwealth, 13 Gratt. (Va.) 767; Commonwealth v. Towles, 5 Leigh (Va.) 743; Slaughter-House Cases, 16 Wall. 36.

[46] Cooley Const. Lim. (6th ed.) 490; citing Corfield v. Coryell, 4 Wash. C. C. 371, 380; Campbell v. Morris, 3 Har. & McH. (Md.) 535, 554; Crandall v. State, 10 Conn. 339; Oliver v. Washington Mills, 11 Allen (Mass.) 268.

[47] Const. of United States, 14th Amend. As laid down by Judge Cooley:—"The line of distinction between the privileges and immunities of citizens of the United States and those of citizens of the several states must be traced along the boundaries of their respective spheres of action, and the two classes must be as different in their

doubted fact that many rights and privileges depend upon actual residence; and a statute which allows process by attachment against a non-resident debtor, even though such process is not admissible against a resident, does not violate the constitutional provisions.[48]

nature as are the functions of the respective governments. A citizen of the United States, as such, has the right to participate in foreign and interstate commerce, to have the benefit of the postal laws, to make use in common with others of the navigable waters of the United States, and to pass from state to state, and into foreign countries, because over all these subjects the jurisdiction of the United States extends, and they are covered by its laws: Story on Const. (4th ed.), § 1937. These, therefore, are among the privileges of citizens of the United States. So every citizen may petition the federal authorities which are set over him in respect to any matter of public concern; may examine the public records of the federal jurisdiction; may visit the seat of government without being subjected to the payment of a tax for the privilege: Crandall v. Nevada, 6 Wall. 35; may be purchaser of the public lands on the same terms with others; may participate in the government if he comes within the condition of suffrage, and may demand the care and protection of the United States when on the high seas or within the jurisdiction of a foreign government: Slaughter-House Cases, 16 Wall. 36. The privileges suggest the immunities. Wherever it is the duty of the United States to give protection to a citizen against any harm, inconvenience or deprivation, the citizen is entitled to an immunity which pertains to federal citizenship. One very plain and unquestionable immunity is exemption from any tax, burden or imposition under state laws, as a condition to the enjoyment of any right or privilege under the laws of the United States. A state, therefore, can not require one to pay a tax as importer, under the laws of congress, of foreign merchandise: Ward v. Maryland, 12 Wall. 163; nor impose a tax upon travelers passing by public conveyances out of the state: Crandall v. Nevada, 6 Wall. 35; nor impose conditions to the right of citizens of other states to sue its citizens in the federal courts: Insurance Co. v. Morse, 20 Wall. 445. These instances sufficiently indicate the general rule. Whatever one may claim as of right under the constitution and laws of the United States by virtue of its citizenship is a privilege of a citizen of the United States. Whatever the constitution and laws of the United States entitle him to exemption from, he may claim an immunity in respect to: Slaughter-House Cases, 16 Wall. 36. And such a right or privilege is abridged whenever the state law interferes with any legitimate operation of the federal authority which concerns his interest, whether it be an authority actively exerted, or resting only in the express or implied command or assurance of the federal constitution or laws:" Cooley Princ. Const. Law 246. See United States v. Reese, 92 U. S. 214; United States v. Cruikshank, 92 U. S. 542; Hall v. De Cuir, 95 U. S. 485; Kirkland v. Hotchkiss, 100 U. S. 491.

[48] State v. Medbury, 3 R. I. 138; Campbell v. Morris, 3 H. & McH. (Md.) 535.

§ 142. **Rights of citizens.**—The fourteenth amendment to the constitution has several objects, and among others it declares the inviolability of the public debt of the United States, and forbids the United States or any other state assuming or paying any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave. It also disqualifies from holding federal or state offices certain persons who shall have engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof.[49] This amendment does not profess to secure the benefit of the same laws and the same remedies to all persons in the United States. But great diversities may and do exist in these respects in different states. All that a person can demand under the last clause of section 1 of the fourteenth amendment is that he shall have the same protection under the laws as is given to other classes and persons under like circumstances in the same place.[50]

[49] Cooley Const. Lim. (6th ed.) 14. Judge Field says of this amendment:—"That amendment was undoubtedly proposed for the purpose of fully protecting the newly-made citizens of the African race in the enjoyment of their freedom, and to prevent discriminating state legislation against them. The generality of the language used necessarily extends its provisions to all persons of every race and color. Previously to its adoption the civil rights act had been passed, which declared that citizens of the United States of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime, should have the same rights in every state and territory to make and enforce contracts, to sue, be parties and give evidence, to inherit, purchase, lease, sell, own and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and should be subject to like punishment, pains and penalties, and to none other. The validity of this act was questioned in many quarters, and complaints were made that, notwithstanding the abolition of slavery and involuntary servitude, the freedmen were in some portions of the country subjected to disabilities from which others were exempt. There were also complaints of the existence in certain sections of the southern states of a feeling of enmity growing out of the collisions of the war toward citizens of the north. Whether these complaints had any just foundation is immaterial; they were believed by many to be well founded; and to prevent any possible legislation hostile to any class from the causes mentioned, and to obviate objections to legislation similar to that embodied in the civil rights act, the fourteenth amendment was adopted. This is manifest from the discussions in congress with reference to it. There was no diversity of opinion as to its object between those who favored and those who opposed its adoption:" San Mateo County v. Southern &c. R. Co., 13 Fed. 722.

[50] Hayes v. Missouri, 120 U. S. 68; s. c. 7 S. Ct. 350; Missouri v. Lewis,

§ 143. The same subject continued.—On this subject Judge Strong says: "A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are executed, shall deny to any person within its jurisdiction the equal protection of its laws. Whoever by virtue of public position under a state government deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name of and for the state, and is clothed with the state's authority, his act is that of the state. This must be so, or the constitutional prohibition has no meaning."[51] It is declared by the fifteenth amendment to the constitution of the United States that the rights of citizens of the United States shall not be abridged or denied by any state, or by the United States, on account of previous condition of servitude, color or race.[52]

§ 144. Personal liability of members of the corporation.—At common law and under the statutes of all our states save those of New England, the members of municipal corporations are not personally liable for the debts of the municipality. As is said by Mr. Justice Field in the case in which the creditors of the city of Memphis en-

101 U. S. 22. For taxation of railroads as a class, see Kentucky R. R. Tax Cases, 115 U. S. 321; s. c. 6 S. Ct. 57.

[51] Ex parte Virginia, 100 U. S. 339. This view was approved in Neal v. Delaware, 103 U. S. 370, 397. The fourteenth amendment does not, says Judge Bradley, "invest congress with power to legislate upon subjects which are within the domain of state legislation, but to provide modes of relief against state legislation or state actions of the kind referred to. It does not authorize congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of state laws and the action of state officers, executive and judicial, when these are subversive of the fundamental rights specified in the amendment:" Civil Rights Cases, 109 U. S. 3; s. c. 3 S. Ct. 18. On this see also, Baldwin v. Franks, 120 U. S. 678; s. c. 7 S. Ct. 656, 763; United States v. Harris, 106 U. S. 629; s. c. 1 S. Ct. 601.

[52] As to these amendments, see Story on Const. (4th ed.), chs. 46, 47, 48, and appendix to vol. 2. Women are not entitled to vote by reason of the new amendments: Minor v. Happersett, 21 Wall. 162; Bradwell v. State, 16 Wall. 130. See also, note 1 in Cooley Const. Lim. (6th ed.) 15. The fourteenth amendment gave colored persons the right to be protected from unfriendly legislation solely on account of their color, the rights of citizenship, and exemption from legislation which might lessen their rights, tend to reduce them to the condition of a subject race, or lower them in civic society: Ex parte Virginia, 100 U. S. 370; Virginia v. Rives, 100 U. S. 313; Strauder v. West Virginia, 100 U. S. 303; Neal v. Delaware, 103 U. S. 370.

deavored to satisfy the debts of the corporation out of the private property of its citizens:[53] "In no state of the Union, outside of New England, does the doctrine obtain that the private property of individuals within the limits of a municipal corporation can be reached by its creditors and subjected to the payment of their demands. In Massachusetts and Connecticut, and perhaps in other states in New England, the individual liability of the inhabitants of towns, parishes and cities for the debts of the latter is maintained, and executions upon judgments issued against them can be enforced against the private property of the inhabitants. But this doctrine is admitted by the courts of those states to be peculiar to their jurisprudence, and an exception to the rule elsewhere prevailing. Elsewhere the private property of the inhabitants of a municipal body can not be subjected to the payment of its debts except by way of taxation; but taxes, as we have already said, can only be levied by legislative authority. The power of taxation is not one of the functions of the judiciary; and whatever authority the states may, under their constitutions, confer upon special tribunals of their own, the federal courts can not by reason of it take any additional powers which are not judicial. In Rees v. City of Watertown,[54] from which we have already quoted, the power asserted by the decree was claimed by counsel, but was rejected by the court. 'Assume,' said the court, 'that the plaintiff is entitled to the payment of his judgment, and that the defendant neglects its duty in refusing to raise the amount by taxation, it does not follow that the court may order the amount to be made from the private estate of one of its citizens. This summary proceeding would involve a violation of the rights of the latter. He has never been heard in court. He has had no opportunity to establish a defense to the debt itself, or, if the judgment is valid, to show that his property is not liable to its payment. It is well settled that legislative exemptions from taxation are valid, that such exemptions may be perpetual in their duration, and that they are, in some cases, beyond legislative interference. The proceeding supposed would violate the fundamental principle contained in chapter twenty-ninth of Magna Charta, and embodied in the constitution of the United States, that no man shall be deprived of his property without due process of law; that is, he must be served with notice of the proceeding and have a day in court to make his defense.'"

§ 145. The same subject continued—Russell v. The Men of Devon.—This doctrine that the members of a municipal corporation are not personally liable for its debts is of early authority. In the famous

[53] Meriwether v. Garrett, 102 U. S. 472, 519.

[54] 19 Wall. 116, 122.

English case of Russell v. The Men of Devon,[55] where the plaintiff brought suit against the inhabitants of the county of Devon for negligence on the part of the county for allowing a public bridge to remain in a dangerous condition, through which the plaintiff sustained injury, it was decided that, as the county possessed no public fund out of which the judgment, if recovered, could be satisfied, the action could not be maintained. The court refused to sanction the doctrine of the personal liability of the inhabitants of the county, on the ground that, if that doctrine were enforced, the judgment might be satisfied out of the private property of one or more of the inhabitants, and that the persons whose property had been applied in satisfaction of the judgment would have no remedy over against the other inhabitants except by an impracticable multiplicity of actions. The doctrine of this case has been followed in the American cases; and, as has been said, the members of a municipal corporation are personally liable for its debts nowhere in this country outside of New England.[56]

§ 146. Personal liability of members of public quasi-corporations in New England.—By a curious and unique custom the members of public quasi-corporations in New England are held to be personally liable for the debts of the corporation; and a judgment obtained against the public quasi-corporation can be satisfied out of the private property of any of its members.[57] The reason for this peculiar practice seems to have been that judgments against these quasi-corporations could not be satisfied out of any corporate fund, as no such fund ex-

[55] 2 T. R. 667.

[56] Cooley Const. Lim. 300; 1 Dillon Munic. Corp. (4th ed.) § 962, n.; Meriwether v. Garrett, 102 U. S. 472; Rees v. City of Watertown, 19 Wall. 107, 116; Symonds v. Clay Co., 71 Ill. 355; North Lebanon v. Arnold, 47 Pa. St. 488; Flori v. City of St. Louis, 69 Mo. 341; Kincaid v. Hardin Co., 53 Iowa 430; s. c. 5 N. W. 589; Miller v. McWilliams, 50 Ala. 427.

[57] Beardsley v. Smith, 16 Conn. 368; Merchants' Bank v. Cook, 4 Pick. (Mass.) 405; Riddle v. Proprietors &c., 7 Mass. 187; Inhabitants &c. v. Inhabitants &c., 14 Mass. 216; Chase v. President &c., 19 Pick. (Mass.) 564; Gaskill v. Dudley, 6 Met. (Mass.) 546; Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332; Adams v. President &c., 1 Greenl. (Maine) 361; Fernald v. Lewis, 6 Maine 264; Beers v. Botsford, 3 Day (Conn.) 159; Fuller v. Hampton, 5 Conn. 416; Atwater v. Inhabitants &c., 6 Conn. 223; McCloud v. Selby, 10 Conn. 390; Union v. Crawford, 19 Conn. 331; Cooley Const. Lim. 297. In Maine it has been decided that a statute providing that judgments against the town may be collected from the private property of members of the town is not in contravention of the constitutional prohibition against the taking of private property without due process of law: Eames v. Savage, 77 Maine 212.

isted, and therefore it was necessary to resort to the private property of the members of the corporation. This private property could be reached either by taxation or execution, and in the New England states the inconvenient and unjust system of levying execution on private property in order to satisfy judgments against the corporation has been adopted.[58]

§ 147. **The same subject continued.**—In the other states of the Union judgments rendered against public quasi-corporations which have no corporate fund out of which to satisfy judgments are satisfied by taxation of the members of the corporation instead of by execution. As is said by Judge Cooley: "So far as this rule [that is, that members of a public quasi-corporation are personally liable for its debts] rests upon the reason that these organizations have no common fund, and that no other mode exists by which demands against them can be enforced, it can not be considered applicable in those states where express provision is made by law for compulsory taxation to satisfy any judgment recovered against the corporate body—the duty of levying the tax being imposed upon some officer who may be compelled by mandamus to perform it. Nor has any usage, so far as we are aware, grown up in any of the newer states like that which had so early an origin in New England. More just, convenient and inexpensive modes of enforcing such demands have been established by statute, and the rules concerning them are conformed more closely to those which are established for other corporations."[59]

§ 148. **Beardsley v. Smith—(a) The reason for the New England doctrine of personal liability of members.**—In this leading case[60] the learning relating to this peculiar custom of New England is so clearly stated in the opinion by Judge Church in the supreme court of errors of Connecticut that we quote his words at length: "We know that the relation in which members of municipal corporations in this state have been supposed to stand in respect to the corporation itself as well as to its creditors has elsewhere been considered in some respects peculiar. We have treated them for some purposes as parties to corporate proceedings, and their individuality has not been considered as merged in their corporate connection. Though corporators, they have been holden to be parties to suits by or against the corporation and individually liable for its debts. Heretofore this has not been

[58] See post, § 148, where the reasons for the custom are fully set forth in the opinion in Beardsley v. Smith, 16 Conn. 368, 375.

[59] Cooley Const. Lim. 300, 301.

[60] Beardsley v. Smith, 16 Conn. 375.

doubted as to the inhabitants of towns, located ecclesiastical societies and school districts. From a recurrence to the history of the law on this subject, we are persuaded that the principle and usage here recognized and followed in regard to the liability of the inhabitants of towns and other communities were very early adopted by our ancestors; and whether they were considered as a part of the common law of England, or originated here as necessary to our state of society, it is not very material to inquire. We think, however, that the principle is not of domestic origin, but to some extent was operative and applied in the mother country, especially in cases where a statute fixed a liability upon a municipality which had no corporate funds. The same reason and necessity for the application of such a principle and practice existed in both countries. Such corporations are of a public and political character; they exercise a portion of the governing power of the state. Statutes impose upon them important public duties. In the performance of these they must contract debts and liabilities which can only be discharged by a resort to individuals, either by taxation or execution. Taxation in most cases can only be the result of the voluntary action of the corporation, dependent upon the contingent will of a majority of the corporators and upon their tardy and uncertain action. It affords no security to creditors, because they have no power over it. Such reasons as these probably operated with our ancestors in adopting the more efficient and certain remedy by execution which has been resorted to in the present case, and which they had seen to some extent in operation in the countries whose laws were their inheritance. The plaintiff would apply to these municipal or quasi-corporations the close principles applicable to private corporations. But inasmuch as they are not, strictly speaking, corporations, but only municipal bodies without pecuniary funds, it will not do to apply to them literally and in all cases the law of corporations."[61]

§ 149. **(b) The doctrine in England.**—The individual liability of the members of quasi-corporations, though not expressly adjudged, was very distinctly recognized in the case of Russell v. The Men of Devon.[62] It was alluded to as a known principle in the case of The Attorney-General v. The Mayor &c. of Exeter,[63] applicable as well to cities as to hundreds and parishes. That the rated inhabitants of an English parish are considered as the real parties to suits against the parish is now supposed to be well settled; and it was so decided in

[61] Citing Inhabitants &c. v. Wood, 13 Mass. 192.

[62] 2 T. R. 667. See ante, § 145.

[63] 2 Russ. 45; s. c. 26 Rev. Rep. 2.

the cases of The King v. The Inhabitants of Woburn[64] and The King v. The Inhabitants of Hardwick;[65] and in support of this principle reference was made to the form of the proceedings, as that they were "against the inhabitants," etc.

§ 150. (c) **Doctrine in Massachusetts and Maine.**—In the state of Massachusetts, the individual responsibility of the inhabitants of towns for town debts has long been established. Distinguished counsel in the case of The President &c. of the Merchants' Bank v. Cook,[66] referring to municipal bodies, says: "For a century past the practical construction of the bar has been that, in an action by or against a corporation, a member of the corporation is a party to the suit." In several other cases in that state the same principle is repeated. In the case of Riddle v. The Proprietors of the Locks and Canals on Merrimack River,[67] Parsons, C. J., in an allusion to this private responsibility of corporators, remarks: "And the sound reason is that, having no corporate fund and no legal means of obtaining one, each corporator is liable to satisfy any judgment obtained against the corporation." So in The Inhabitants of Brewer v. The Inhabitants of New Gloucester,[68] the court says: "As the law provides that, when judgment is recovered against the inhabitants of a town, execution may be levied upon the property of any inhabitant, each inhabitant must be considered as a party." In the case above referred to of President &c. v. Cook, Parker, C. J., expresses the opinion of the court upon this point thus: "Towns, parishes, precincts, etc., are but a collection of individuals with certain corporate powers for political and civil purposes, without any corporate fund from which a judgment can be satisfied; but each member of the community is liable in his person and estate to the execution which may issue against the body; each individual, therefore, may be well thought to be a party to a suit brought against them by their collective name. In regard to banks, turnpike and other corporations the case is different." The counsel concerned in the case of Mower v. The Inhabitants of Leicester,[69] without contradiction speak of the practice of subjecting individuals as one of daily occurrence. The law on this subject was very much considered in the case of Chase v. The President &c. of the Merrimack Bank,[70] and was applied and enforced against the members of a territorial parish. "The question is," said the court, "whether on an execution against a town or parish the

[64] 10 East 395.
[65] 11 East 578.
[66] 4 Pick. (Mass.) 405.
[67] 7 Mass. 169, 187.
[68] 14 Mass. 216.
[69] 9 Mass. 247.
[70] 19 Pick. (Mass.) 564.

body or estate of any inhabitant may be lawfully taken to satisfy it. This question seems to have been settled in the affirmative by a series of decisions, and ought no longer to be considered an open question." The state of Maine when separated from Massachusetts retained most of its laws and usages as they had been recognized in the parent state, and among others the one in question. In Adams v. President &c. of Wiscasset Bank,[71] Mellen, C. J., says: "It is well known that all judgments against quasi-corporations may be satisfied out of the property of any individual inhabitant."

§ 151. (d) The doctrine in Connecticut.—"The courts of this state from a time beyond the memory of any living lawyer have sanctioned and carried out this usage as one of common-law obligation; and it has been applied, not to towns only, but also, by legal analogy, to territorial ecclesiastical societies and school districts. The forms of our process against these communities have always corresponded with this view of the law. The writs have issued against the inhabitants of towns, societies and districts as parties. As early in the history of our jurisprudence as 1705, a statute was enacted authorizing communities such as towns, societies, etc., to prosecute and defend suits, and for this purpose to appear either by themselves, agents or attorneys. If the inhabitants were not then considered as parties individually and liable to the consequences of judgments against such communities as parties, there would have been a glaring impropriety in permitting them to appear and defend by themselves; but if parties, such a right was necessary and indispensable. Of course this privilege has been and may be exercised.[72] Our statute providing for the collection of taxes enacts that the treasurer of the state shall direct his warrant to the collectors of the state tax in the several towns. If neither this nor the further proceedings against the collectors and the selectmen authorized by the statute shall enforce the collection of the tax, the law directs that then the treasurer shall issue his execution against the inhabitants of such town. Such an execution may be levied upon the estate of the inhabitants; and this provision of the law was not considered as introducing a new principle or enforcing a novel remedy, but as being only in conformity with the well-known usage in other cases. The levy of an execution under this statute produced the case of Beers v. Botsford.[73] There the execution which had been issued against the town of Newton by the treasurer of the state had been levied upon the property of the plaintiff, an inhabitant of that town, and he had thus been compelled

[71] 1 Greenl. (Maine) 361.
[72] 1 Swift System 227.
[73] 3 Day (Conn.) 159.

to pay the balance of a state tax due from the town. He sued the town of Newton for the recovery of the money so paid by him. The most distinguished professional gentlemen in the state were engaged as counsel in that case; and it did not occur, either to them or to the court, that the plaintiff's property had been taken without right; on the contrary, the case proceeded throughout on the conceded principle of our common law that the levy was properly made upon the estate of the plaintiff. And without this the plaintiff could not have recovered of the town, but must have resorted to his action against the officer for his illegal and void levy. In Fuller v. The Town of Hampton,[74] Peters, J., remarked that if costs are recovered against a town the writ of execution to collect them must have been issued against the property of the inhabitants of the town; and this is the invariable practice. The case of Atwater v. The Inhabitants &c. of Woodbridge[75] also grew out of this ancient usage. The ecclesiastical society of Bethany had been taxed by the town of Woodbridge for its money at interest, and the warrant for the collection of the tax had been levied upon the property of the plaintiff and the tax had thus been collected of him, who was an inhabitant of the located society of Bethany. Brainard, J., who drew up the opinion of the court, referring to this proceeding said: 'This practice with regard to towns has prevailed in New England, so far as I have been able to investigate the subject, from an early period—from its first settlement;—a practice brought by our forefathers from England, which had there obtained in corporations similar to the towns incorporated in New England.' It will here be seen that the principle is considered as applicable to territorial societies as to towns, because the object to be attained was the same in both—'that the town or society should be brought to a sense of duty and make provision for payment and indemnity;'—a very good reason and very applicable to the case we are considering. The law on this subject was more distinctly brought out and considered by this court in the late case of McLoud v. Selby,[76] in which this well-known practice, as it has been applied to towns and ecclesiastical societies, was extended and sanctioned as to school districts; 'else it would be breaking in upon the analogies of the law.' 'They are communities for different purposes, but essentially of the same character.' And no doubt can remain, since the decision of this case, but that the real principle of all the cases on this subject has been and is that the inhabitants of quasi-corporations are parties individually as well as in their corporate capacities to all actions in which the corporation

[74] 5 Conn. 416.
[75] 6 Conn. 223.
[76] 10 Conn. 390.

is a party. And to the same effect is the language of the elementary writers."[77]

§ 152. Limitations upon the personal liability of members of New England public quasi-corporations.—It may be noted here, although the subject will be more thoroughly discussed in a subsequent portion of this work, that while the members of these New England public quasi-corporations are personally liable for the debts of the corporation, still this liability is much curtailed by the doctrine, which is well settled, that these corporations, like counties and other quasi-corporations, are not liable for torts, unless a statute expressly creates such liability.[78] This rule is, however, subject to limitation in the case of New England public quasi-corporations. It is not applicable in cases where the injury arises from a neglect of special duties or the abuse of special authorities, imposed or conferred upon the town with its consent or at its request.[79]

[77] Beardsley v. Smith, 16 Conn. 368; 2 Kent Com. 221; Angell & Ames Corp. 374; 1 Swift Digest 72, 794; 5 Dane Abr. 158; 2 Dillon Munic. Corp., § 962, n.; Cooley Const. Lim. 297–300. Judge Cooley cites and approves Beardsley v. Smith, supra, and quotes at length the opinion of Judge Church.

[78] See chapter on Torts, post; Mower v. Inhabitants &c., 9 Mass. 247; s. c. 6 Am. D. 63; Bigelow v. Inhabitants, 14 Gray (Mass.) 541; Hill v. City of Boston, 122 Mass. 344, 351; s. c. 23 Am. R. 332; Adams v. President &c., 1 Greenl. (Maine) 361; Mitchell v. Rockland, 52 Maine 118; Frazer v. Lewiston, 76 Maine 531; Farnum v. Concord, 2 N. H. 392; Eastman v. Meredith, 36 N. H. 284; s. c. 72 Am. D. 302; Baxter v. Winoonski Turnpike Co., 22 Vt. 114; Bray v. Wallingford, 20 Conn. 416; Beardsley v. Smith, 16 Conn. 368; Cooley Const. Lim. 30; 2 Dillon Munic. Corp., §§ 962–965.

[79] Bigelow v. Inhabitants, 14 Gray (Mass.) 541; Eastman v. Meredith, 36 N. H. 284; Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332.

CHAPTER VI.

OFFICERS AND AGENTS.

SECTION

153. Legislative power to create officers and agents.
154. Legislative control over officers and agents.
155. Who are officers?
156. Conduct of elections—Construction of election statutes.
157. Miscellaneous instances of the construction of election statutes.
158. Validity of election—General principles.
159. The same subject continued—Illustrations.
160. English rule as to majority.
161. Election by ballot.
162. Election by city council.
163. Election by definite bodies generally—Majority and plurality.
164. The same subject continued—Quorum majority.
165. Informal ballot.
166. Tenure of office.
167. Tenure of office where city passes from one class to another.
168. Power to hold over—English and American rules.
169. The same subject continued.
170. Appointment of officers.
171. Validity of appointment.
172. Appointment by de facto officers.
173. Compensation of officers—In general.
174. The same subject continued—Failure of corporate funds.
175. The same subject continued—Illustrations.
176. Miscellaneous instances.
177. Extra compensation.
178. Compensation of attorneys.
179. The same subject continued.
180. Compensation—Power of legislature to control.
181. Compensation in case of removal.
182. Qualifications for office-holding.
183. Official oath.
184. The same subject continued.
185. Duties of officers.
186. Powers of mayor.
187. The same subject continued—Statutory provisions.
188. The same subject continued—Miscellaneous powers.
189. Miscellaneous instances of powers of municipal officers.
190. De facto officers—General statement.
191. The same subject continued—Color of title.
192. Incumbent of an unconstitutional office.
193. Possession of office by de facto officer.
194. Rights and liabilities of de facto officers.
195. Resignation by acceptance of incompatible office.
196. Acceptance and withdrawal of resignation.
197. Removal of officers and agents—How effected.
198. Causes for removal—English and American rules.
199. Preferring of charges.

SECTION
200. Power of corporation to remove officers and agents.
201. The same subject continued.
202. Notice of proceeding to remove.
203. The same subject continued.
204. By whom discharged.
205. All persons charged with notice of duties and powers of municipal agents.
206. Liability of officers to the corporation.
207. Instances of fraudulent acts of municipal agents.
208. Liability of corporation to officers.
209. Indictment of municipal officers.

§ 153. Legislative power to create officers and agents.—The authority that makes the laws has a large discretion in determining the means through which they shall be executed; and the performance of many duties for which they may provide by law may be referred either to the chief executive of the state, or, at their option, to any other executive or ministerial officer, or even to a person specially named for the duty.[1] Whatever power or duty is expressly given to, or imposed upon, the executive department, is altogether free from the interference of the other branches of the government. Especially is this the case where the subject is committed to the discretion of the chief executive officer, either by the constitution or by the laws. So long as the power is vested in him it is to be by him exercised, and no other branch of the government can control its exercise, and from those duties which the constitution requires of him he can not be excused by law.[2] But other powers or duties the executive can

[1] Cooley Const. Lim. (6th ed.), ch. 5, p. 133; Bridges v. Shallcross, 6 W. Va. 562; People v. Osborne, 7 Colo. 605.

[2] Attorney-General v. Brown, 1 Wis. 513. The legislature may appoint a state board if the constitution does not expressly empower the governor to do so: People v. Freeman, 80 Cal. 233; s. c. 22 Pac. 173. See also, State v. Covington, 29 Ohio St. 102; Biggs v. McBride, 17 Or. 640; s. c. 21 Pac. 878; 5 L. R. A. 115; Hovey v. State, 119 Ind. 386; s. c. 21 N. E. 890. It is not unconstitutional to allow the governor to supply temporary vacancies in offices which, under the constitution, are elective: Sprague v. Brown, 40 Wis. 612. If the governor has the power to appoint, with the consent of the senate, and to remove, he may remove without such consent: Harman v. Harwood, 58 Md. 1; Lane v. Commonwealth, 103 Pa. St. 481. As to discretionary powers, see Cooley Const. Lim. (6th ed.) 54, 55. An appointment to office was said, in Taylor v. Commonwealth, 3 J. J. Marsh. (Ky.) 401, to be intrinsically an executive act. Where an office is elective, the legislature can not fill it by appointment or by extending the term of the incumbent: People v. McKinney, 52 N. Y. 374; People v. Bull, 46 N. Y. 57; Devoy v. Mayor &c., 35 Barb. (N. Y.) 264; s. c. 22 How. Pr. (N. Y.) 226; People v. Blake, 49 Barb. (N. Y.) 9; People v. Raymond, 37 N. Y. 428; People v.

not exercise or assume, except by legislative authority, and the power which in its discretion it confers it may also in its discretion withhold or confide to other hands.[3]

§ 154. **Legislative control over officers and agents.**—Although, by their constitution, the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty: they retain in their own hands, so far as they have thought it needful to do so, a power to control the governments they create, and the three departments are responsible to and subject to be ordered, directed, changed or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon.[4] The maxim which lies at the foundation of our government is that all political power originates with the people. But since the organization of government it can not be claimed that either the legislative, executive or judicial powers, either wholly or in part, can be exercised by them. By the institution of government the people surrender the exercise of all the sovereign functions of government to agents chosen by themselves, who at least theoretically represent the supreme will of their constituents. Thus all power possessed by the people themselves is given and centered in their chosen representatives.[5]

§ 155. **Who are officers?**—It is sometimes difficult to determine who is an officer and entitled to the rights and privileges pertaining to an office. The distinction between an officer and employe is not always well defined. In general it may be stated that a person elected or appointed, whose duties are fixed by statute or ordinance, is an officer.[6] Neither is it at all times apparent whether an officer is

Albertson, 55 N. Y. 50; State v. Goldstucker, 40 Wis. 124; Opinion of Justices, 117 Mass. 603.

[3] Cooley Const. Lim. (6th ed.), ch. 5, p. 134. "In deciding this question [as to the authority of the governor], recurrence must be had to the constitution:" Field v. People, 3 Ill. 79, 80.

[4] Cooley Const. Lim. (6th ed.), ch. 17, p. 747.

[5] Gibson v. Mason, 5 Nev. 283, 291. See Luther v. Borden, 7 How. 1; Koehler v. Hill, 60 Iowa 543; s. c. 14 N. W. 738; 15 N. W. 609; State v. Tufly, 19 Nev. 391; s. c. 12 Pac. 835; 3 Am. St. 895.

[6] The employment of a person as superintendent of water-works does not make him an officer in the absence of an ordinance or resolution creating the office and specifying his duties: Town of Salem v. McClintock, 16 Ind. App. 656; s. c. 46 N. E. 39; 59 Am. St. 330. Operators of an ambulance under a contract with the city, who are required by contract to answer all calls from the city dispensary, and are under the direction of the dispensary surgeon, are not municipal agents, and are personally liable for the negligent acts of the driver: Green v. Eden, 24 Ind. App. 583; s. c. 56 N. E. 240.

a public or state officer, or a municipal officer. He may be appointed by the municipality, and yet the functions, duties, etc., pertaining to the office be such as to make him a state officer.[7] Nor does the payment of his salary by the city necessarily make him a municipal officer.[8] A statute which defines and enumerates village officers, and regulates their choice and term of office, applies to all villages, whether they exist under general law or special charter.[9]

§ 156. Conduct of elections—Construction of election statutes.—The statutes of the different states point out specifically the mode in which elections shall be conducted; but, although there are great diversities of detail, the same general principles govern them all. Election statutes are to be tested like other statutes, but with a leaning to liberality in view of the great public purposes which they accomplish; and except where they specifically provide that a thing shall be done in the manner indicated, and not otherwise, their provisions designed merely for the information and guidance of the officers must be regarded as directory only, and the election will not be defeated by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared.[10]

Commissioner of jurors under Greater New York charter is not the head of a department, but is a city officer: People v. Welde, 59 N. Y. S. 1030. New York and Brooklyn bridge commissioners held to be local and not state officers: People v. Nixon, 158 N. Y. 221; s. c. 52 N. E. 1117. Commissioners appointed to construct a bridge over East river are municipal officers: People v. Van Wyck, 59 N. Y. S. 134. A city justice of the peace is a city officer: Hulaniski v. City of Ogden City, 20 Utah 233; s. c. 57 Pac. 876.

[7] Policemen are public or state officers, although appointed through the instrumentality of a municipal corporation: Everill v. Swan, 17 Utah 514; s. c. 55 Pac. 681.

[8] A person holding office by appointment of court is not a city officer, though his salary is paid by the city treasurer: O'Brien v. City of New York, 32 N. Y. S. 34; s. c. 84 Hun (N. Y.) 50.

[9] In re Board of Health &c., 60 N. Y. S. 27; s. c. 43 App. Div. (N. Y.) 236.

[10] Cooley Const. Lim. (6th ed.), ch. 17, pp. 776, 777; People v. Cook, 14 Barb. (N. Y.) 259; s. c. 8 N. Y. 67. See also, Clifton v. Cook, 7 Ala. 114; Dishon v. Smith, 10 Iowa 212; Attorney-General v. Ely, 4 Wis. 420; People v. Higgins, 3 Mich. 233; Platt v. People, 29 Ill. 54; Board &c. v. People, 65 Ill. 360; State v. Stumpf, 21 Wis. 579; Sprague v. Norway, 31 Cal. 173; Howard v. Shields, 16 Ohio St. 184; Sheppard's Election Case, 82 Pa. St. 295; Wheelock's Election Case, 82 Pa. St. 297; State v. O'Day, 69 Iowa 368; s. c. 28 N. W. 642. All votes received after the polls should be closed are illegal: Varney v. Justice, 86 Ky. 596; s. c. 6 S. W. 457. Where a city council passes an ordi-

§ 157. Miscellaneous instances of the construction of election statutes.—Where a city council is the sole judge of the election and qualifications of its members, it can not, after having seated a member on investigation, at a subsequent meeting order a second investigation. Certiorari may issue in such case without waiting for the report and final order.[11] If there is a tie in the election for mayor between the incumbent and another candidate, and the city council fails to choose one of them for mayor by lot, as required by the city charter, equity will not interfere to restrain the incumbent from

nance redistricting the city into wards, a special election thereunder is specifically prohibited by the revised statutes of Ohio; and hence, where a special election is attempted to be held for the selection of members of the council under such ordinance, such special election is inoperative, and persons holding seats in the council by virtue of certificates based upon such special election may be ousted by quo warranto: State v. Kearns, 47 Ohio St. 566; s. c. 25 N. E. 1027. A town was incorporated by a special act, its managers to consist of five trustees, to be elected. It was held that a subsequent general act, repealing all inconsistent provisions in earlier acts, and fixing a day for the election of all town officers, made that day the day on which the five trustees should be elected: Kelly v. Gahn, 112 Ill. 23. Where a statute providing for an election by the inhabitants within the boundaries of a proposed municipal corporation, at which the question of incorporation shall be submitted to the people, fails to provide for any census or enumeration of the people preliminary to such proceedings, a failure to make such enumeration will not affect the validity of the election, where the board of county commissioners make a record in their proceedings declaring the number of inhabitants: Smith v. Board &c., 45 Fed. 725. Testimony of the village clerk that the names contained in the petition for the election represented a majority of the taxpayers of the village, as contained in the last assessment roll, is sufficient proof that the petitioners represented a majority of the taxpayers: People v. Bird, 55 Hun (N. Y.) 610; s. c. 8 N. Y. S. 801. The laws of Minnesota of 1885, as amended by laws of 1887, designating the second Tuesday of March as the day upon which the city council of St. Paul shall elect a corporation attorney, absolutely prohibit an election upon a day antecedent to that specified: State v. Murray, 41 Minn. 123; s. c. 42 N. W. 858.

[11] State v. Council &c., 47 N. J. L. 64; s. c. 54 Am. R. 117. The laws of the state of Michigan, 1887, No. 208, providing for the correction of frauds and mistakes in the canvass and returns made by inspectors of elections, does not apply in the case of elections for aldermen for the city of Detroit; and an application for an investigation of the returns of such election should be made to the board of aldermen: the city charter, as amended in 1887, providing that the board of aldermen shall be the judges of the election and qualifications of its own members, and shall have power to determine contested elections to said board: Naumann v. Board &c., 73 Mich. 252; s. c. 41 N. W. 267.

exercising the functions of the office.[12] When once the polls are closed in accordance with the law they can not be legally reopened and votes received.[13] The mere fact that the number of officers to be elected to fill vacancies was not determined prior to the election does not make the election void.[14] Where the charter provides that the board

[12] Huels v. Hahn, 75 Wis. 468; s. c. 44 N. W. 507.

[13] The Virginia code of 1887, § 5, subd. 16, provides that the word "city" shall be construed to mean a town containing a population of five thousand or more, and having a corporation or hustings court. It was held that § 1016, providing that officers provided for in the "charter of the several cities shall be elected or appointed as the charters may prescribe: provided, that the councilmen . . . of each ward of a city shall be chosen by the qualified voters of such ward," does not apply to a town which has less than five thousand population, and no corporation or hustings court: Roche v. Jones, 87 Va. 484; s. c. 12 S. E. 965. The act of Pennsylvania, passed March 20, 1862, provided for the election of six supervisors by the qualified voters of Hempfield township at the first succeeding election, and made it the duty of such supervisors to then divide the township into six districts, giving each district a supervisor. The court decided that this act repealed by implication the act of February 26, 1853, authorizing the election of one supervisor each by two particular districts, and of two by the third; and that each district of the township was entitled to one supervisor, who was to be elected, however, by the voters of the whole township: Martz v. Long, 110 Pa. St. 502; s. c. sub nom. In re Martz's Election, 1 Atl. 419.

[14] An election of five town councilmen of North Providence, R. I., under Pub. St. R. I., ch. 37, § 1, providing that there shall be annually elected in each town not less than three nor more than seven councilmen, is not void by reason of the voters' failing to determine, in advance of the election at the annual meeting, the precise number to be elected, as required by § 6; the number of five having been fixed upon in 1874, and that number having ever since remained unchanged, but no formal vote on the point having been taken except in 1875, 1878 and 1882, the number being considered as having been fixed by common acquiescence or consent: State v. Andrews, 15 R. I. 394; s. c. 6 Atl. 596. Where the vacancy in the office of township supervisor, caused by resignation, has not been filled by appointment, as prescribed by Comp. St. Neb., ch. 26, § 103, (1) by the town board; (2) where the offices of the town board are all vacant, by the township clerk; (3) where there be no township clerk, by the county clerk,—the same may be filled by election at a special town meeting, when properly convened, under Comp. St. Neb., ch. 18, providing that electors at special town meetings, when properly convened, shall have power to fill vacancies in any of the town offices when the same shall not have already been filled by appointment: State v. Taylor, 26 Neb. 580; s. c. 42 N. W. 729. The acts of Virginia, 1883-4, § 12, amending the charter of the city of Portsmouth, and providing that the city council shall judge by a majority vote of the qualifications of its members, has application only where a seat is contested: Jobson v. Bridges, 84 Va. 298; s. c. 5 S. E. 529.

of aldermen shall be the final judge of the election and qualification of its members, the election contest can not be tried by any other tribunal.[15]

§ 158. **Validity of election—General principles.**—In Judge Cooley's admirable work on Constitutional Limitations it is said that it is a little difficult at times to adopt the true mean between those things which should, and those which should not, defeat an election; for while, on the one hand, the laws should seek to secure the due expression of his will by every legal voter, and guard against any irregularities or misconduct that may tend to prevent it, so, on the other hand, it is to be borne in mind that charges of irregularity or misconduct are easily made, and that the danger from throwing elections open to be set aside or controlled by oral evidence is perhaps as great as any in our system. An election honestly conducted under the forms of law ought generally to stand, notwithstanding the individual electors may have been deprived of their votes, or unqualified voters allowed to participate.[16] The admission of illegal votes at an election will not necessarily defeat it, but to warrant its being set aside on that ground it should appear that the result would have been different had they been excluded.[17]

§ 159. **The same subject continued—Illustrations.**—An erroneous recital in the proclamation of a clause as part of the act, which clause was stricken out before the passage of the act, will not invalidate the election, the date and title of the act being properly given, and it not appearing that the result of the election was in any way affected

[15] Cate v. Martin, 69 N. H. 610; s. c. 45 Atl. 644; People v. Hanshaw, 60 Mich. 200; s. c. 26 N. W. 879; 1 Am. St. 498.

[16] Cooley Const. Lim. (6th ed.), ch. 17, p. 785. See also, People v. Village of Highland Park, 88 Mich. 653; s. c. 50 N. W. 660.

[17] Inhabitants &c. v. Stearns, 21 Pick. (Mass.) 148; Trustees &c. v. Gibbs, 2 Cush. (Mass.) 39; Ex parte Murphy, 7 Cow. (N. Y.) 153; Judkins v. Hill, 50 N. H. 140; State v. Rogers, 86 N. C. 357; Shields v. McGregor, 91 Mo. 534; s. c. 4 S. W. 266; People v. Cicotte, 16 Mich. 283; Tarbox v. Sughrue, 36 Kan. 225; s. c. 12 Pac. 935; Swepston v. Barton, 39 Ark. 549. In England candidates are nominated and known prior to election day, and the system of voting was known as open voting, and some cases there favor the proposition that votes which were cast for a disqualified person are not good, and the other candidate is elected: Reg. v. Ledgard, 8 Ad. & El. 535; Rawlinson Corp. (5th ed.) 64, note; Reg. v. Councillors of Derby, 7 Ad. & El. 419; Reg. v. Hiorns, 7 Ad. & El. 960. But if the voter is ignorant of his candidate's disqualification, the vote is counted in determining whether an opposing candidate has a majority: Reg. v. Mayor &c., L. R. 3 Q. B. 629.

by the error.[18] Although the statute requires that notice shall state the number of inhabitants within the boundaries of the proposed corporation as ascertained by the board of commissioners, a failure to do so is a mere irregularity, which can not prejudice a non-resident property-owner and will not affect the validity of the election.[19] Where the statute provides for the calling of an election of officers

[18] In re Cleveland, 51 N. J. L. 319; s. c. 18 Atl. 67. The New York laws of 1871, creating the board of water commissioners of the village of Dunkirk, and granting them specific powers, creates a new office within the meaning of the constitution of New York, art. 10, § 2, which provides that all city, town and village officers for whose election or appointment the constitution makes no provision, shall be elected by the city, etc., or some authority thereof, and all other officers for whose election or appointment the constitution makes no provision, and all officers whose offices shall thereafter be created by law, shall be elected by the people or appointed in such manner as the legislature may direct, and is not unconstitutional because it names the persons who are to constitute the commission: Hequembourg v. City of Dunkirk, 2 N. Y. S. 447. Under the laws of Pennsylvania of 1874, § 208, providing that cases of contested elections of the fourth class (embracing municipal councilmen) shall be tried and determined by the court of quarter sessions, and laws of Pennsylvania of 1887, p. 204, providing that "each branch of councils shall judge of the qualifications of its members, and contested elections shall be determined by the courts of law," the court of quarter sessions has no jurisdiction to pass upon the qualification of a councilman, but only upon the regularity of the election: Auchenbach v. Seibert, 120 Pa. St. 159; s. c. 13 Atl. 558. The charter of the city of A., § 22 (Sess. Acts Oreg. 1889, p. 240), provides that the council shall be the judge of the qualifications of its members, and, in case of a contest between two persons claiming to have been elected thereto, must determine the same, subject to the review of any court of competent jurisdiction. The court decided that this is not exclusive of the jurisdiction of the circuit courts, under the general statutes of the state, to determine such contests in the first instance: State v. Kraft, 18 Or. 550; s. c. 23 Pac. 663. See also, State v. Huggins, Harp. L. (S. C.) 94; State v. Deliesseline, 1 McC. (S. C.) 52; Grier v. Shackleford, 3 Brev. (S. C.) 491; State v. Cockrell, 2 Rich. L. (S. C.) 6.

[19] Smith v. Board &c., 45 Fed. 725. The laws of New Hampshire provide that "city councils shall have power to provide for the appointment or election of all necessary officers for the good government of the city, not otherwise provided for." It was decided that a city council has no right to determine when a board of assessors shall exercise their power to choose one of their number as clerk of the board: Weeks v. Dennett, 62 N. H. 2; holding also, that a notice of an election to determine the question of incorporation, signed by the county auditor, who is ex officio clerk of the board of commissioners, and in which it appears that the election was ordered by the board, is a sufficient compliance with the provision of the statute that such notice shall be given by the board of commissioners.

upon a petition signed by a majority of the electors voting at the last general election then next preceding, as appears from the poll-list, the petition must be signed by a majority of the electors appearing on the poll-list.[20] An election at a time not fixed for such purpose by the law is void, and a person previously appointed to fill the vacancy will hold over under the appointment, though voted for and declared elected at the illegal election.[21] But where no time for election of officers is fixed by law the mayor and council may do so.[22] A town does not lose its corporate existence by a failure to elect officers.[23]

§ **160. English rule as to majority.**—Although it is clear that, in the absence of any special provision to the contrary, the corporate body are bound by the acts not only of the major part of them, but by the major part of those who are present at a regularly convened corporate meeting, yet where the corporate body consists of a definite number, and it is provided that an act shall be done by the body for the time being, or a major part of them, a majority of the whole must meet for the purpose; and if the body be so reduced that a majority of the whole definite number no longer remains, the act can not be done unless permitted by the charter or by usage.[24]

[20] Bush v. State, 100 Wis. 549; s. c. 76 N. W. 606.

[21] Lyman v. Commonwealth (Ky.), 55 S. W. 686; State v. Winter, 148 Ind. 177; s. c. 47 N. E. 462; Sibbald v. Buckell (N. J.), 36 Atl. 1032.

[22] State v. Hoff (Tex. Civ. App), 29 S. W. 672.

[23] State v. Hoff (Tex. Civ. App), 29 S. W. 672.

[24] Rex v. Hoyte, 6 T. R. 430; Rex v. Bellringer, 4 T. R. 810, and the cases there cited. But a majority of those present, when legally assembled, will bind the rest: Rex v. Miller, 6 T. R. 268. See also, Rex v. Monday, Cowper 530, 538; Rex v. Devonshire, 1 B. & C. 609; Rex v. Bower, 1 B. & C. 492. See further, as to plurality and majority rule at popular elections, the chapter on Meetings and Elections, post, and the rules governing elections by definite bodies, §§ 164, 165, post; Rex v. May, 4 B. & Ad. 843; Rex v. Greet, 8 B. & C. 363; Rex v. Headley, 7 B. & C. 496; Cotton v. Davies, 1 Str. 53; Oldknow v. Wainwright, 2 Burr. 1017; s. c. 1 W. Bl. 229; Reg. v. Overseers of Christ Church, 7 E. & B. 409. Where an election of four councilors had taken place on the first of November, three of whom were to supply ordinary vacancies, and the fourth an extraordinary vacancy, but no distinction had been made between them, either in the notice of election, the voting papers or in the publishing of the names of the four persons elected, such election was held to be irregular and void: Reg. v. Rowley, 3 Q. B. 143; s. c. in the exchequer chamber, 6 Q. B. 668. See also, Reg. v. Rippon, L. R. 1 Q. B. D. 217; Reg. v. Mayor &c., 7 Ad. & El. 963.

§ 161. Election by ballot.—The mode of voting in this country, at all general elections, is almost universally by ballot.[25] "A ballot may be defined to be a piece of paper or other suitable material, with the name written or printed upon it of the person to be voted for; and where the suffrages are given in this form, each of the electors in person deposits such a vote in the box or other receptacle provided for the purpose and kept by the proper officers."[26]

[25] Cooley Const. Lim. (6th ed.), ch. 17, p. 760.

[26] Cush. Leg. Assemb., § 103. "In this country, and indeed in every country where officers are elective, different modes have been adopted for the electors to signify their choice. The most common modes have been either by voting viva voce, —that is, by the elector openly naming the person he designates for the office,—or by ballot, which is depositing in a box provided for the purpose a paper on which is the name of the person he intends for the office. The principal object of this last mode is to enable the elector to express his opinion secretly, without being subject to being overawed or to any ill will or prosecution on account of his vote for either of his candidates who may be before the public. The method of voting by tablets in Rome was an example of this manner of voting. There certain officers appointed for that purpose, called "diribitores," delivered to each voter as many tablets as there were candidates, one of whose names was written upon every tablet. The voter put into a chest prepared for that purpose which of these tablets he pleased, and they were afterwards taken out and counted. Cicero defines tablets to be little billets, in which the people brought their suffrages. The clause in the constitution directing the election of the several state officers was undoubtedly intended to provide that the election should be made by this mode of voting to the exclusion of any other. In this mode the freemen can individually express their choice without being under the necessity of publicly declaring the object of their choice; their collective voice can be easily ascertained, and the evidence of it transmitted to the place where their votes are to be counted, and the result declared with as little inconvenience as possible: Temple v. Mead, 4 Vt. 535, 541. In the case last cited, and in Henshaw v. Foster, 9 Pick. (Mass.) 312, it was held that a printed ballot complies with a constitutional provision which requires all ballots for certain state officers to be "fairly written." Common lines on ruled paper do not render the election void: People v. Kilduff, 15 Ill. 492. But where the law prohibits "any device or mark" by which a ticket may be distinguished, a dotted line under the title of an office for which no candidate is named is sufficient to condemn the whole ballot: Steele v. Calhoun, 61 Miss. 556. See also, Druliner v. State, 29 Ind. 308; Millholland v. Bryant, 39 Ind. 363. A different method from the one usually in force in printing the names of officers will not make the ballot void: Coffey v. Edmonds, 58 Cal. 521; Owens v. State, 64 Tex. 500. The board of aldermen having no power to elect except by ballot, no action by them ratifying their previous action can make such election valid: Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422. A provision of the rules of the council, that officers whose salaries are pay-

§ 162. Election by city council.—Under the laws or constitution of some states the council or city government has the power to elect officers or fill vacancies by vote.[27] Where city ordinances require

able from the city treasury shall be elected by ballot, applies only to elective officers to be chosen by the council under the charter, and not to subordinate appointees whose compensation is fixed by the mayor and aldermen: Williams v. City of Gloucester, 148 Mass. 256; s. c. 19 N. E. 348. A city council was empowered to appoint, in joint convention, a prosecuting attorney. No mode was prescribed, and there was no power of removal. The convention balloted, and A. received a majority of the votes cast. It was held that A.'s title to the office was not affected by the fact that a resolution declaring him elected was lost, and that a resolution declared the ballot void by reason of errors which did not in fact exist, and that another resolution declared another person elected (Park, C. J., dissenting): State v. Barbour, 53 Conn. 76; s. c. 22 Atl. 686; 55 Am. R. 65.

[27] Under the charter of the city of Knoxville, the board of mayor and aldermen is composed of a mayor and nine aldermen. By section 4 the mayor can not vote, except in case of a tie. Section 5 provides that a majority of the board shall form a quorum. An ordinance provides that any vacancy on the board of education shall be filled by an election by the mayor and aldermen. At such an election eight of the aldermen and the mayor were present. Complainant received four votes, there were three scattering votes and one blank. The mayor did not vote, but declared complainant elected. It was held that a majority of the eight aldermen present was necessary to elect complainant, and the blank vote must be counted to show that he did not receive such majority. Nor was the action of the mayor, in declaring complainant elected, equivalent to a vote for him: Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422. See this case cited and compared with other authorities in §§ 164, 165, post. An election ordered by officers de facto is held a good election: State v. Goowin, 69 Tex. 55; s. c. 5 S. W. 678. A common council, constituted as it will be when a term of office about to expire shall end, and having authority to appoint the successor of the incumbent, may lawfully make such appointment before the expiration of the current term: Horan v. Lane, 53 N. J. L. 275; s. c. sub nom. State v. Lane, 21 Atl. 302, where it is also held that when a statute empowers the council to appoint to a certain office, an ordinance of the council which, if enforced against succeeding councils, would defeat or materially impair their power of appointment, is void. Under the charter of the city of Hartford, providing that the common council should appoint a prosecuting attorney, but giving no direction as to the mode of appointment, the council met, and a member moved that the convention proceed to ballot for a prosecuting attorney, which motion prevailed. A ballot was taken, giving relator a majority of votes. The result having been announced, another member offered a resolution declaring relator elected, which was lost. Two resolutions were then offered and passed, one declaring the ballot for relator null and void by reason of errors in the same, and the other declaring defendant elected to the office. It was held that the relator was elected when the result of the first ballot

that its city solicitor shall be chosen by a concurrent vote of both branches of the city council, he can not be legally chosen unless by a concurrent vote; and the fact that the record untruly states that a vote was in concurrence, when it also states facts showing that it was not, does not show a valid election.[28] Where, by the city charter, the mayor is allowed a casting vote in the city council, in accordance with the statute of Maine, his act is sufficiently formal for that purpose if he determines and declares which of two candidates is elected, although he may not go through the formality of casting a ballot.[29]

§ 163. Election by definite bodies generally—Majority and plurality.—When an election is to be made by a definite body of electors, as by a board of aldermen or common council, the authorities are not in accord as to whether a majority is requisite to elect a candidate or whether a mere plurality is sufficient. On the one hand it is asserted by the supreme court of Tennessee to be "well settled" and "not open to controversy" that in such cases a majority is necessary.[30]

was announced, there being no error therein, and the convention had no power afterwards to deprive him of the office (Park, C. J., dissenting): State v. Barbour, 53 Conn. 76; s. c. 22 Atl. 686; 55 Am. R. 65. The election of an assessor by the board of aldermen at a legal meeting can not be reconsidered at an adjourned session, and another person elected in his place: State v. Phillips, 79 Maine 506; s. c. 11 Atl. 274.

[28] Saunders v. Lawrence, 141 Mass. 380. Since the Illinois act of 1875, providing a new mode for the assessment and collection of taxes, and authorizing the appointment of a city tax commissioner, is unconstitutional and void, an ordinance, under which such a city tax commissioner was elected, is void, and incapable of conferring any rights upon him: McGrath v. City of Chicago, 24 Ill. App. 19. A common council, being the sole judges of the election of its members, may, upon a contest respecting the election of one of its members, appoint a committee to take testimony, and to report the facts and the evidence to the council: Salmon v. Haynes, 50 N. J. L. 97; s. c. 11 Atl. 151.

[29] Small v. Orne, 79 Maine 78; s. c. 8 Atl. 152. See the sections on Presiding Officers in the chapter on Public Boards, post. The charter of the city of Cohoes provides that "the mayor and aldermen of the city shall constitute the common council thereof," and that the common council "shall be judge of the election and qualification of its own members." It was held that the common council was not the judge of the election of mayor, he not being one of their "own" members within the spirit or intent of the charter: Garside v. City of Cohoes, 12 N. Y. S. 192; s. c. 58 Hun (N. Y.) 605. Under the general law of Illinois there is no office of city marshal in the absence of an ordinance creating it: People v. Blair, 82 Ill. App. 570.

[30] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 6 L. R. A. 308; 17 Am. St. 870; citing Dillon Munic. Corp., § 282 (wherein the author

On the other hand, it was held by the supreme court of Michigan in a recent case that "in this country it is generally understood that, in the absence of any statutory provision expressly requiring more, a plurality of the votes cast will elect. It is only in cases where the statute so provides that a majority of all the votes cast is necessary to the choice of an officer."[31] This is the only case, so far as the author's examination has enabled him to discover, where it has been distinctly decided that a candidate may be chosen by a definite body without receiving more votes than all of his competitors combined.

§ 164. The same subject continued—Quorum majority.—Assuming that a majority is necessary to elect, shall it be (1) a majority of those present—provided they constitute a quorum, (2) a majority of the quorum voting, or (3) simply a majority of those, however few, who vote? According to the Tennessee case cited in the preceding section, a majority of those who are present must concur to do any valid act, including the election of officers.[32] In respect to the second and third questions, some of the courts draw a distinction between elections and ordinary business of the board.[33] And the rule requir-

says a majority must concur to do any valid act), and 6 Am. & Eng. Encyc. of Law 331. Turney, C. J., dissented. He does not affirm, however, that a plurality is sufficient, but differs from the majority of the court on another ground, to be noticed in the following section. Although the court deemed this to be the settled common-law rule, the intrinsic value of the case is seriously impaired by the fact that the charter provided for the transaction of business only by a majority of a quorum, and gave the mayor a right to vote when a majority thereof could not decide, "thereby conclusively showing," said the court, "that a majority must concur or there is no result:" Idem, p. 62.

[31] Conrad v. Stone, 78 Mich. 635, 639; s. c. 44 N. W. 333. In this case there were three candidates, and, of a board of sixteen members present, eight voted for one, seven for another, and one for the third. The first was declared elected.

[32] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 6 L. R. A. 308; 17 Am. St. 870, where a blank ballot was not counted as a vote, Turney, C. J., dissenting. The court quotes from Dillon Munic. Corp., § 217, in support of its conclusion; and the same section is also quoted in Rushville Gas Co. v. City of Rushville, 121 Ind. 206, 210; s. c. 23 N. E. 72; 6 L. R. A. 315; 16 Am. St. 388, to sustain exactly the opposite contention. The latter case related to business of the body, not an election, and is cited with other authorities in the chapter on Public Boards, post.

[33] State v. Green, 37 Ohio St. 227; Launtz v. People, 113 Ill. 137, 143; Oldknow v. Wainwright (or Rex v. Foxcraft), 2 Burr. 1017; Gosling v. Veley, 4 H. L. Cas. 679. These cases decide that if a quorum be present the majority can not defeat an election by refraining from voting, although they might by such conduct block the business proceedings of a meeting.

ing only a majority of those actually voting for a candidate is declared by a decided preponderance of authority.[34] Those who refrain from voting are conclusively presumed to acquiesce in the action of those who do, and even an express protest on the ground that a quorum has not voted is unavailing.[35]

§ 165. Informal ballot.—An interesting point regarding an "informal ballot," so called, was determined in a recent case by the supreme court of Michigan. A statute provided for the election by ballot of a school examiner on a certain day by the chairman of the board of school inspectors. At a meeting convened for that purpose five informal ballots were taken, with the same result, and at a subsequent meeting on the same day a candidate was formally elected. It was decided that the person who had a plurality on the informal ballots was duly chosen. The court said: "When the law requires certain persons to be elected by ballot, there is and can be no such thing as an 'informal ballot.' All ballots cast under statutory requirements are formal and final if there is an election, and can not be repeated. Informal ballots are sometimes taken in a caucus or in a nominating convention, but they have no place in an election required by law for the election of officers."[36]

[34] Launtz v. People, 113 Ill. 137, 143 (extending the rule to a vote on the approval of the bond of the officer thus elected); Booker v. Young, 12 Gratt. (Va.) 303 (private corporation); Attorney-General v. Shepard, 62 N. H. 383 (where it was held not necessary for a quorum to vote in any case). See also, cases cited in preceding note, and Rushville Gas Co. v. City of Rushville, 121 Ind. 206, 210; s. c. 23 N. E. 72; 16 Am. St. 388; 6 L. R. A. 315. State v. Dillon, 125 Ind. 65; s. c. 25 N. E. 136, holds that if a candidate receives a majority of those voting, which is less than a majority of those present, but is a majority of the number necessary to constitute a quorum, it is sufficient. - - - It is competent for a council to adopt a rule that a majority of those elected, and voting, may choose a candidate: Morton v. Youngerman, 89 Ky. 505; s. c. 12 S. W. 944.

[35] Gosling v. Veley, 4 H. L. Cas. 679; Willcock Munic. Corp., § 546; State v. Green, 37 Ohio St. 227. In Conrad v. Stone, 78 Mich. 635; s. c. 44 N. W. 333, it is stated as a general rule that a plurality suffices to elect. In the cases cited in the preceding note, a majority of those voting, though less than a quorum, satisfies the law. All actually voted in the former case, and in none of the latter cases were there more than two candidates competing. Suppose there are three or more candidates—Quære: May a plurality (that is, less than a majority) of less than a quorum of votes elect, a quorum being present?

[36] Conrad v. Stone, 78 Mich. 635; s. c. 44 N. W. 333, holding also that it was not necessary for the chairman to declare the candidate elected; on which point see also, State v. Barbour, 53 Conn. 76; s. c. 22 Atl. 686; 55 Am. R. 65.

§ 166. Tenure of office.—The term of office for which an officer is elected to serve is, as a general rule, fixed by the ordinance or law under which he is elected or appointed.[87] Where a statute pro-

[87] The New York City consolidation act of 1882 says that clerks of the district courts "shall hold office for the term of six years from the date of appointment." It was held to include the case of a clerk appointed to fill a vacancy caused by the resignation of a clerk during his six years: People v. Breen, 53 N. Y. Super. 167 (Truax, J., dissenting). The revised statutes of Ohio, relating to municipal corporations, provide that members of the council in office shall, unless a vacancy sooner occurs, serve until the end of their respective terms. Section 8 provides that any person holding an office or public trust shall continue therein until his successor is elected, or appointed, and qualified. It was decided that members of the council were entitled to hold over under this section: State v. Kearns, 47 Ohio St. 566; s. c. 25 N. E. 1027. The New Jersey statute of 1886, by which the term of office of the members of the city council, etc., is made three years, does not apply to the alderman of Atlantic City, who is ex officio a member of the common council, and elected annually: State v. Gouldey, 52 N. J. L. 62; s. c. 18 Atl. 695. See also, State v. Haynes, 50 N. J. L. 97; s. c. 11 Atl. 151; Jobson v. Bridges, 84 Va. 298; s. c. 5 S. E. 529. The Michigan statute of 1889, entitled "An act to amend § 4 of Act No. 282 of the local acts of 1877, entitled 'An act to revise the charter of the city of Grand Rapids,'" provides "that the elective officers now holding office within that part of the said city comprised of the third, eighth, ninth and tenth wards, as created by this act, shall continue to hold the offices for which they were respectively elected, and to discharge the duties of said offices for the whole of the territory for which they were elected until the officers are duly elected and qualified, as provided by the city charter at the annual charter election on the first Monday of April, A. D. 1890, and after said date the several aldermen whose terms of office shall not have expired shall only represent the territory within the ward in which they shall then respectively reside, and at said annual charter election in 1890 aldermen and other ward officers shall be elected in accordance with the provisions of the charter of said city and the requirements of this act." It was decided that the provision for the aldermen to continue in the office to which they were elected, in the wards in which they reside, until such selected term expires, is not an appointment of city officers by the legislature, and that sufficient provision is made for the election of aldermen in the new wards: Stow v. Common Council, 79 Mich. 595; s. c. 44 N. W. 1047. A superintendent is not rendered an agent of the city by an ordinance which provides that "he shall continue in office until removal, or until a successor be chosen:" Prince v. City of Lynn, 149 Mass. 193; s. c. 21 N. E. 296. One elected under a statute which fixes the term of office at a longer period than the constitution allows can not exercise the duties of such office for any period: State v. Alter, 5 Ohio C. C. 253. When the term of an officer is not fixed by law an appointment for a specified time is a contract when accepted: Hardy v. City of Orange, 61 N. J. L. 620; s. c. 42 Atl. 581; Chase v. City of Lowell, 7 Gray (Mass.) 33; Horan v. Board &c., 58

vides that, before the election of town councilmen, the number to be elected shall be determined, an informal acceptance of five as the number to serve, accepted by common consent through several years, will be deemed as valid a determination of the number of councilmen to serve in that capacity as a decision by formal vote of the electors.[88] The constitution of Colorado provides that every person holding a civil office in a municipality shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified. It was held that where a candidate for mayor is by the proper canvassing board declared elected, files his oath and enters upon the discharge of his official duties, the outgoing mayor vacating the office without objection, the court may, on the election being contested and adjudged illegal, order him to yield the office to the

N. J. L. 533; s. c. 33 Atl. 944. Where policemen may be appointed for a probationary term it does not apply to the chief of police: State v. Vallins, 140 Mo. 523; s. c. 41 S. W. 887. As to appointment of auditors by comptroller under Greater New York charter, see McDonald v. City of New York, 59 N. Y. S. 16; s. c. 42 App. Div. (N. Y.) 263.

[88] Metcalf v. Andrews (R. I.), 7 Atl. 4. In this case a city charter provided that certain officers, including the city treasurer, should be appointed by the common council, to continue in office until the office should be declared vacant, or another person should be appointed to succeed him, and that the city treasurer should, before entering on his duties, give bond with sureties for the faithful performance of his duties. S. was appointed treasurer in January, 1867, and continued in office until January, 1875. He gave bond, with sureties, in conformity with the city charter. In an action on the bond, the sureties pleaded that, by the rules and usages of the common council, all the officers appointed by it, including the city treasurer, were appointed for one year, subject to removal at pleasure, and, when not reappointed at the expiration of the term, were suffered to hold over at pleasure; and that they executed the bond with a knowledge of the said rules and usages of the common council, and on assurances, made by the common council and the plaintiffs, that they would be bound as such only for the term of one year. The court held that the provisions of the charter as to the mode of appointment and term of office must be strictly followed, and this plea presented no defense: City of Newark v. Stout, 52 N. J. L. 35; s. c. 18 Atl. 943. Incumbents superseded by councilmen elected under or by virtue of void proceedings are entitled to be restored by due process of law; but the legal organization of the city, and the acts of the councilmen de facto, within the purview of the statutes, will be recognized and upheld: State v. Gray, 23 Neb. 365; s. c. 36 N. W. 577. Persons who are acting as town officers under an incorporation which is void because of a pre-existing valid charter will be ousted on proceedings in quo warranto, when the boundaries of the districts from which they were elected are not coterminous with those prescribed in the original charter: Harness v. State, 76 Tex. 566; s. c. 13 S. W. 535.

president of the board of supervisors; since a Colorado statute provides that in case of a vacancy in the office of mayor the president of the board of supervisors shall act.[39]

§ 167. Tenure of office where city passes from one class to another.—When, under a statute, cities are divided into classes, and no provision is made by the statute for the election of new officers, the officers in office at the time of the passing of the statute remain in office until new officers are elected and qualified.[40]

[39] Londoner v. People, 15 Colo. 557; s. c. 26 Pac. 135. Brooklyn city charter 1888, tit. 3, § 4, provides that persons appointed to certain city offices "shall severally execute a bond to the corporation in such penalty and with such sureties as the common council may require, conditioned for the faithful performance of their respective duties. . . . Such sureties shall qualify in such form as the common council shall prescribe; and the bonds thereby required, after having been fully approved, shall be filed in the office of the city clerk, . . . before any of the officers required to execute the same shall enter upon the duties of their respective offices." City Ordinances, tit. 9, § 2, provides that "the clerk of the common council shall also indorse and certify on each bond, before the same shall be filed, the resolution of the common council approving the same, and at the time of such approval." 1 Rev. St. N. Y. (8th ed.), p. 397, § 9, provides that every officer shall hold over after "his term of office shall have expired, until a successor in such office shall be duly qualified." It was decided that an incumbent of one of the enumerated offices is entitled to hold over after the expiration of his term of office, and to draw the salary therefor, until the bond is approved and filed as required by the city charter and ordinances, and an approval by a justice of the supreme court is not sufficient: De Lacey v. City of Brooklyn, 12 N. Y. S. 540. Under New York constitution, art. 10, § 5, see People v. Board &c., 59 N. Y. S. 476; s. c. 42 App. Div. (N. Y.) 510. Under Neb. laws of 1897, p. 54, ch. 10, § 102, where the mayor-elect is ineligible the president of the council becomes entitled to the office and not the former mayor: State v. Moores, 56 Neb. 1; s. c. 76 N. W. 530. The term of an officer in a city under the general law of Illinois whose term is not fixed by the ordinance creating the office, is two years, unless changed by ordinance during the time: People v. Blair, 82 Ill. App. 570. The Vt. act of 1896, p. 169, § 278, repeals all prior acts inconsistent therewith, and the latter act determines the term of the chief of police: Smith v. Cosgrove, 71 Vt. 196; s. c. 44 Atl. 73.

[40] Under the laws of Kansas, 1885, after a city of the third class is organized into a city of the second class, the mayor is to be elected on the first Tuesday of April of each odd-numbered year, and a vacancy must be filled at a special election called and held for that purpose, as provided by ordinance; and where no one is elected mayor of such a city, after its organization, on the first Tuesday of April of an odd-numbered year, and no special election is called by ordinance, the mayor of the city of the third class will hold over: Moser v. Shamleffer, 39 Kan. 635; s. c. 18 Pac. 956. When a

§ 168. Power to hold over—English and American rules.—Formerly in England the law was well settled that the term of office of the mayor or other head officer was annual and expired at the end of the year, and that he could not hold over until his successor was provided, unless there was a special provision in the statute to that effect.[41] But the American courts have not adhered to the strict English rule, but have decided that the chief officer, unless the legis-

city of the third class is made a city of the second class, under the Kansas statute, the city officers continue until new officers are elected and qualified: Ritchie v. City of South Topeka, 38 Kan. 368; s. c. 16 Pac. 332. The Pennsylvania act of 1889, relating to the division of the cities of the state into three classes in accordance with their population, provides (§ 2) that at the election occurring not less than one month after a city has changed classes "the proper officers shall be elected to which the city shall become entitled under the change in classification; and upon the first Monday next succeeding thereto the terms of all officers of said city then in office, whose offices are superseded by reason thereof, shall cease and determine." The court decided that, where a city passed from the third into the second class, it was entitled to such new officers as were provided for in cities of the second class which did not exist in cities of the third class only, and the terms of such of its existing officers only as were abolished in cities of the second class expired; and where the city had twenty-six councilmen under the third class, and was entitled to but thirteen under the second class, and the terms of thirteen of such councilmen would expire during the current year, it was not necessary to elect new councilmen, as all the old members held over for their respective terms: Commonwealth v. Wyman, 137 Pa. St. 508; s. c. 21 Atl. 389. The Pennsylvania act of 1887, dividing the cities of the state into seven classes, and providing that in the fourth to the seventh classes the persons then in office should hold for the terms for which they were elected, except as otherwise provided, the provisions of the charter of a city of the fifth class for the election and installation of members of the council apply until the terms of all the members then in office expire, at which time the provisions of the act of 1887, in relation thereto, will take effect; and the provisions that the councils then in office should hold until their "successors" should be installed, according to the act, and that at the first election under the act the members should be chosen, etc., do not show a contrary intention; there being a provision that the terms of members in cities of the fourth class should cease at the end of that municipal year: Appeal of Ayars, 122 Pa. St. 266; s. c. 16 Atl. 356. See also, Pittsburgh's Petition, 138 Pa. St. 401; s. c. 21 Atl. 757, 759, 761.

[41] Rex v. Hearle, 1 Str. 626, 627; Rex v. Thornton, 4 East 308; Rex v. Atkins, 3 Mod. 3, 12; Mayor of Durham's Case, 1 Sid. 33; Foot v. Prowse, 1 Str. 625; s. c. 3 Bro. 167, 169; Glover Corp. 173. Some charters provided that the chief officer should hold office until his successor was provided, although his original term of office was only one year: Rex v. Philips, 1 Str. 394. For the manner in which this was changed, see 9 Anne, ch. 20, § 8.

lative intent to the contrary is apparent, *holds over* until his successor is appointed.[42] The reorganization of a city under the general incorporation law is an abrogation of its former charter, and determines the tenure of all officers under it, except such as are within the saving clause of the general law.[43]

§ 169. The same subject continued.—In this country it is generally held that an annual officer of whatever grade, especially if his duties consist in the safe-keeping and current management of property committed to his custody, holds over until the appointment and qualification of another in his place. That conclusion was reached

[42] 2 Kent Com. 238; Elmendorf v. Mayor &c., 25 Wend. (N. Y.) 693; Slee v. Bloom, 5 Johns. Ch. (N. Y.) 366, 378; People v. Runkle, 9 Johns. (N. Y.) 147. By the general municipal incorporation act of California, 1883, it is provided that officers chosen at a special election to be held within two weeks after the vote in favor of reorganization shall hold their respective offices only until the next general municipal elections. By § 752 it is provided that all elective officers of cities of the fifth class shall be chosen at a general municipal election to be held therein in each odd-numbered year; the marshal, assessor, etc., to hold office for two years, and the trustees for four years; but there is a further proviso that the first board of trustees elected under the provision of this act shall so classify themselves by lot that three of their number shall go out of office at the expiration of two years, and two at the expiration of four years. It was decided that the elective officers, except members of the board of trustees, are to hold office for two years, and they for four years, and that an election must be held every two years: Ruggles v. Board of Trustees &c., 88 Cal. 430; s. c. 26 Pac. 520. The New York consolidation act, 1882, provides that the terms of all officers, whensoever actually appointed, shall commence on the 1st day of May in the year in which the terms of office of their predecessors shall expire; but the commissioner of public works to be appointed on the expiration of the term of the present incumbent in December, 1884, shall hold from the 1st day of May succeeding such month. It was held that it was clearly the intention that the commissioner's term should begin May 1, 1885, and it was immaterial that the termination of his predecessor's term was erroneously stated to be in December, 1884: People v. Barrett, 8 N. Y. S. 677.

[43] McGrath v. City of Chicago, 24 Ill. App. 19. Where, upon the revision of a city charter, the term and mode of election to a city office are omitted, though the office is continued in existence, the then incumbent rightfully in possession holds over until superseded by proper legislative action: State v. Simon, 20 Or. 365; s. c. 26 Pac. 170. A certificate issued by the recorder of the board of aldermen, which is not authorized by law, notifying complainant of his election, and signed "by order of the board," is no evidence of ratification of previous invalid action: Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 17 Am. St. 870; 6 L. R. A. 308. See also, State v. George, 23 Fla. 585; s. c. 3 So. 81.

upon a review of the authorities by the supreme court of California in 1865, where the doctrine was placed upon considerations of public convenience and necessity.[44] And the court of appeals of Maryland, in a comparatively recent case, makes the following comprehensive statement: "Unless there is some clearly expressed and positive prohibition which, by its terms, operates as an ouster, the person filling the office should continue to discharge those duties until a successor is qualified, no matter whether the office is created by the constitution, by an act of the general assembly, or by a municipal ordinance. Ubi eadem est ratio, eadem est lex."[45] The same rule obtains in many other jurisdictions.[46]

§ 170. **Appointment of officers.**—Where a city council is authorized to elect officers, and no particular mode of election is prescribed, it may appoint them by resolution,[47] and has complete control over

[44] People v. Oulton, 28 Cal. 44. In that case the office of state librarian was in contention, but the remarks of the court show that the rule would certainly be applied to subordinate officers of a municipal corporation. It is often expressly declared by statute that an incumbent shall hold over.

[45] Robb v. Carter, 65 Md. 321, 335; s. c. 4 Atl. 282 (where a city solicitor, appointed under ordinance, held over); Thomas v. Owens, 4 Md. 189; Marshall v. Harwood, 5 Md. 423; Sansbury v. Middleton, 11 Md. 296.

[46] School Dist. v. Atherton, 12 Met. (Mass.) 105; Dow v. Bullock, 13 Gray (Mass.) 136; Chandler v. Bradish, 23 Vt. 416; Kreidler v. State, 24 Ohio St. 22; Stewart v. State, 4 Ind. 396; State v. Harrison, 113 Ind. 434; s. c. 16 N. E. 384; People v. Town of Fairbury, 51 Ill. 149; People v. Ferris, 16 Hun (N. Y.) 219; Cordiell v. Frizell, 1 Nev. 130; State v. Wells, 8 Nev. 105; Ex parte Lawhorne, 18 Gratt. (Va.) 85; Wheeling v. Black, 25 W. Va. 266; People v. Reid, 11 Colo. 138; s. c. 17 Pac. 302; Moser v. Shamleffer, 39 Kan. 635; s. c. 18 Pac. 956; Wier v. Bush, 4 Litt. (Ky.) 429. For a construction of statutes relating to the holding over of officers, see cases cited in Throop Public Officers, § 325 et seq.; Mechem Public Offices and Officers, § 398 et seq. Where municipal officers are elected or appointed for a fixed term they hold over until the election or appointment and qualification of their successors: People v. Blair, 82 Ill. App. 570. While a mayor holds over after his term by reason of no election of a successor there is no vacancy: State v. Wright, 56 Ohio St. 540; s. c. 47 N. E. 569.

[47] People v. Bedell, 2 Hill (N. Y.) 196; Commonwealth v. City of Pittsburg, 14 Pa. St. 177; Low v. Commissioners of Pilotage, R. M. Charl. (Ga.) 302; State v. Mayor &c., 46 N. J. L. 140; Russell v. City of Chicago, 22 Ill. 283; Wilder v. City of Chicago, 26 Ill. 182. Where the charter provides that the mayor and aldermen shall constitute the council, and that in case of a tie the presiding officer may vote, an ordinance requiring a majority to appoint to a city office, and 10 out of 12 are present and 6 vote for the appointment, it is not a tie and the mayor is not entitled to a vote: In re Dudley 53 N. Y. S. 742; s. c. 33 App. Div. (N. Y.) 465. Where, by charter, a board was created, the members of which were to

all offices and officers existing under by-laws, unless specially restricted by law.[48] Where the statute provides for the appointment of

be appointed by the mayor, who was to be ex officio a member and authorized to preside at all meetings when present, and which board was authorized to appoint a street commissioner, it was held that an election of such commissioner at a meeting of such board, when the mayor was presiding, on a motion declined to be put by the mayor, but put by a member and carried, was void: State v. Lashar, 71 Conn. 540; s. c. 42 Atl. 636.

[48] People v. Conover, 17 N. Y. 64; People v. Mayor &c., 5 Barb. (N. Y.) 43; Samis v. King, 40 Conn. 298; Wadraven v. Memphis, 4 Coldw. (Tenn.) 431; City of Madison v. Korbly, 32 Ind. 74, 79; Ball v. Fagg, 67 Mo. 481. The acts of artificial persons afford the same presumptions as the acts of natural persons: Chief Justice Story, in President &c. (Bank) v. Dandridge, 12 Wheat. 64, 70, and cases there cited. The constitution of Virginia providing that all city, village and town officers whose election or appointment is not provided for by the constitution shall be elected by the electors of such cities, towns and villages, or appointed by such authorities as the general assembly shall designate, is merely enabling, and does not prohibit the legislature on incorporating a town from appointing officers until an election is held: Roche v. Jones, 87 Va. 484; s. c. 12 S. E. 965. The public laws of Rhode Island, 1890, providing for the appointment by the mayor of Providence, in February, 1891, and triennially thereafter, of a commissioner of public works, and requiring that the commissioner "now in office and those hereafter to be appointed" should have control of the city engineering department, and should appoint a city engineer on the first Monday in May of each year, abolished the then-existing office of city engineer after the first Monday in May, 1890, and did not provide for an additional city engineer to be connected with the board of public works: Gray v. Granger, 17 R. I. 201; s. c. 21 Atl. 342. Laws of New York, 1888, ch. 214, tit. 3, § 2, provides for the appointment of city officers, and declares that, if the council shall fail to appoint any such officer within three weeks after any vacancy occurs, it shall be the duty of the mayor, immediately on the expiration of said three weeks, to appoint such officer and fill such vacancy. It was held, where the city engineer resigned, that after the expiration of three weeks the power of the council to fill such vacancy ceased: People v. Merrick, 16 N. Y. S. 246; s. c. 61 Hun (N. Y.) 396. A municipal board having been abolished by a special act and its duties transferred to a new one, the members of the old board can not enjoin the appointment of the members of the new board on the ground that the special act is unconstitutional: Reemelin v. Mosby, 47 Ohio St. 570; s. c. 26 N. E. 717. The public laws of Rhode Island, 1890, which provide that "the town councils of the several towns throughout the state, and the mayors of the several cities, except the city of Providence, shall each elect an inspector of buildings, who shall be paid such amount for his services as shall be determined by the town or city council electing him," require such inspectors to be appointed by the mayors, and not by the city councils, of the cities of Pawtucket, Woonsocket and Newport: In re Building Inspectors, 17 R. I. 819; s. c. 21 Atl. 913. The charter of

such village officers as shall be provided for by ordinance, a village ordinance creating the office of deputy marshal is legal.[49]

§ 171. **Validity of appointment.**—The appointment of a person to a city office by a mayor under a law which requires confirmation by the council gives the appointee no right to the office without such confirmation by the proper and legal city council.[50] Where a statute empowers the council of a city to appoint to a certain office, an ordinance providing that the council shall elect, every three years, a fit person to such office, who shall hold his office for the term of three years, and until his successor is elected, is void, as impairing the power of appointment of succeeding councils.[51] Where officers are to be appointed by the mayor to hold at the pleasure of the ap-

Los Angeles (Act Cal., Jan. 31, 1889), directing the city council to appoint as a depositary of the public moneys the bank offering the highest rate of interest therefor, and the treasurer to deposit the city funds there daily, is void, being inconsistent with that provision of the constitution of California which provides that the legislature shall not delegate to any private corporation, company or individual the right to interfere with or control any county, city or municipal money, and that the public moneys shall be deposited with the treasurer, and that making any profit out of such moneys shall be a felony; and also with the penal code of California, punishing by imprisonment the misappropriation of public moneys by the person charged with keeping them: Yarnell v. City of Los Angeles, 87 Cal. 603; s. c. 25 Pac. 767.

[49] Kriseler v. Le Valley, 122 Mich. 576; s. c. 81 N. W. 580.

[50] People v. Weber, 89 Ill. 347. Under an ordinance providing for the annual appointment of a gas inspector by the city council, an appointment to such office "subject to the further orders of the council" is invalid: King v. City of Buffalo, 10 N. Y. 564; s. c. 57 Hun (N. Y.) 586.

[51] Horan v. Lane, 53 N. J. L. 275; s. c. sub nom. State v. Lane, 21 Atl. 302. Proceedings had under the act of New Jersey, approved April 6, 1889, providing for an election to determine whether the mayor of a city shall have the power to appoint certain officers, are not invalidated by a misrecital of some of the provisions of the act in the proclamation of an election; the act not requiring their insertion in the proclamation, and there being nothing to show that the error affected the result of the election: In re Cleveland, 52 N. J. L. 188; s. c. 19 Atl. 17. The record of the appointment of a village marshal was read and approved by the board of trustees, as being in accordance with the facts. The validity of his appointment was questioned because the record was interlined. It was held that the interlineation was immaterial: Brophy v. Hyatt, 10 Colo. 223; s. c. 15 Pac. 399. The appointment by a city council of a member thereof to an office which the statutes of Ohio make a member of council ineligible to fill, and his acceptance thereof, do not work an abandonment of his office as councilman, for the appointment to the second office is absolutely void: State v. Kearns, 47 Ohio St. 566; s. c. 25 N. E. 1027.

pointing power no confirmation is required.[52] Where an officer is appointed by the mayor and the appointment is confirmed by the council under the provisions of the charter, the confirmation exhausts the power of the council.[53] The power to appoint heads of departments is an executive power, where the business of a city is administered through departments.[54] Where no record was kept of an appointment, no commission or writing issued to the appointee, and no services performed, a new board need not recognize the appointment.[55]

§ 172. **Appointments by de facto officers.**—Whether an appointment to office by one who is himself only a de facto officer gives a good title to the appointee is not settled. In England, where a town burgess was appointed by a de facto mayor, and the latter was ousted upon a quo warranto, the judgment was held conclusive in a like proceeding against the former.[56] In North Carolina and Ohio such appointments are brought within the general rule touching the validity of acts of de facto officers in which the public have an interest, and the appointee continues to hold the office after the ouster of his superior.[57] The supreme court of New York, on the other hand, has held that a judgment in an action in the nature of a quo warranto, whereby an officer is ousted and his contestant declared entitled, is evidence in favor of an appointee of the latter against one who derives title from the former.[58]

§ 173. **Compensation of officers—In general.**—It is a general rule of law that a corporation is liable to its officers for their salaries

[52] State v. Doherty, 16 Wash. 382; s. c. 47 Pac. 958.

[53] State v. Wadhams, 64 Minn. 318; s. c. 67 N. W. 64.

[54] Attorney-General v. Varnum, 167 Mass. 477; s. c. 46 N. E. 1.

[55] People v. Keller, 61 N. Y. S. 746. Board of health of Woburn, Mass., is appointed by the mayor, without confirmation of the city council: Doherty v. Buchanan, 173 Mass. 338; s. c. 53 N. E. 878. Where a charter requires a certificate of appointment to a city office to be made by the council, a certificate by the mayor is not in compliance with such charter: In re Dudley, 53 N. Y. S. 742; s. c. 33 App. Div. (N. Y.) 465. Where a charter limits the appointment of firemen to those under 30 years it is imperative, although an applicant was under 30 when the charter took effect, and at that time was eligible: People v. Scannell, 62 N. Y. S. 1064; s. c. 49 App. Div. (N. Y.) 244.

[56] Rex v. Lisle, Andr. 163; s. c. 2 Str. 1090. See also, Rex v. Mayor &c., 5 T. R. 66; Rex v. Grimes, 5 Burr. 2598; Rex v. Hebden, Andr. 389.

[57] People v. Staton, 73 N. C. 546; State v. Alling, 12 Ohio 16; State v. Jacobs, 17 Ohio 143. See also, Mallett v. Uncle Sam &c. Co., 1 Nev. 188; Brady v. Howe, 50 Miss. 607.

[58] People v. Anthony, 6 Hun (N. Y.) 142. See also, People v. Murray, 73 N. Y. 535; and a dictum, contra, by Bronson, J., in People v. Stevens, 5 Hill (N. Y.) 616.

when the work has actually been done; but it is highly necessary that great care should be exercised in appointing or electing the officers to their positions, as the least omission or technicality may be fatal to their appointment or election, in which event they have no right to compensation.[59] The salary of an official may be reduced

[59] An act passed in Pennsylvania May 23, 1874 (P. L. 252), provided that the city comptroller "shall have the supervision and control of the fiscal concerns of all departments, bureaus and officers of the city and school districts. . . . He shall be paid a fixed yearly salary." The school district of Easton did not accept this act, but continued to act under a special law. It had power to appoint an auditor to the school accounts. The city comptroller audited the school accounts, the school board having passed a resolution that it was his duty as city comptroller to do so. It was decided that, not having been appointed auditor by the school district, he could not recover compensation for such services: Rothrock v. School District, 133 Pa. St. 487; s. c. 19 Atl. 483; 25 W. N. C. (Pa.) 510. Under the general statutes of Colorado, § 3326, which provides for annual appropriation bills by the city councils of municipalities, and that the objects and purposes for which an appropriation is made shall be specified, an appropriation bill by the city of Leadville, which recites a total appropriation of a certain amount, subdivided into appropriations for the following specific objects or purposes,—to wit, "salary fund," "streets," "fire," "gas," "interest," and "contingent expenses,"—is a sufficient compliance with the statute to entitle a street commissioner duly elected, whose salary is fixed by ordinance or resolution of the city council, to resort to the salary fund for payment of his salary; and it is not necessary that the bill should specify each particular office, and the exact sum to be paid the incumbent thereof: City of Leadville v. Matthews, 10 Colo. 125; s. c. 14 Pac. 112. A laborer in the employ of a city, who was dismissed and afterwards reinstated, under laws of N. Y., 1887, ch. 464, providing for preference of honorably discharged Union soldiers as employes upon public works, etc., can not recover from the city wages for the time between his removal and reinstatement, where his position was filled by another, who performed the duties thereof, and was paid therefor by the city: Higgins v. City of New York, 131 N. Y. 128; s. c. 30 N. E. 44; reversing s. c. 14 N. Y. S. 554; 60 Hun (N. Y.) 578 (mem.); and following Terhune v. Mayor &c., 88 N. Y. 248; and adhering to the general rule that payment to a de facto officer is a defense to an action brought by the de jure officer to recover the same salary. See also, Hagan v. City of Brooklyn, 126 N. Y. 643; s. c. 27 N. E. 265; and for a contrary view, State v. Carr, 129 Ind. 44; s. c. 28 N. E. 88; and a criticism of the prevailing rule by Mr. Freeman in a note to Andrews v. Portland, 79 Maine 484; s. c. 10 Atl. 458, in 10 Am. St. 284. Where a contestant recovers a public office from the incumbent, he is also entitled to recover from the latter the salary received by him during the term which belonged to the former: Killion v. Van Patten, 42 Kan. 295; s. c. 22 Pac. 382. See also, State v. Holmes, 43 La. An. 1185; s. c. 10 So. 172. But it must be shown that the incumbent actually received the salary: Merritt v. Hinton, 55 Ark. 12; s. c. 17 S. W. 270. The clerk of the city

during his term of office.[60] But an officer can not be com-

and county of New York, having been designated by that title for years before the passage of laws of N. Y., 1857, ch. 628, is the city clerk within the provision of § 23 of that act, that bonds taken pursuant thereto by excise commissioners, from applicants for licenses, shall, in cities, be filed "in the city clerk's office;" and such clerk is therefore entitled, for filing each such bond, to the fee of six cents allowed him by Code Civil Proc. N. Y., § 3304, for filing any paper required by law to be filed in his office other than is expressly provided for, no special fee being prescribed therefor by any statute: People v. Giegerich, 14 N. Y. S. 263. Policemen appointed without authority can not recover compensation: Foster v. City of Wilmington, 8 Houst. (Del.) 415; s. c. 32 Atl. 348. An act granting certain cities power to fix the compensation of mayors and limiting the salary to the amount so fixed is not self-executory, and if no ordinance is passed is of no effect: State v. Olinger, 109 Iowa 669; s. c. 80 N. W. 1060. It is a fundamental rule that a man can not be judge in his own case; and an alderman can not, therefore, determine his own compensation: McFarland v. Gordon, 70 Vt. 455; s. c. 41 Atl. 507. The Minnesota laws of 1891, ch. 6, § 11, abrogated the authority, under the charter of St. Paul, to compensate for legal services rendered by one not a member of the regular legal department: Horn v. City of St. Paul, 80 Minn. 369; s. c. 83 N. W. 388. Compensation voted councilmen, where there is no provision of law for such compensation, is a misappropriation of public funds: In re Borough of Dickson City (Com. Pl.), 2 Lack. Leg. N. (Pa.) 133. Where elective officers receive salary as prescribed by charter an ordinance providing for compensation of councilmen is invalid in the absence of charter authority: Bardsley v. Sternberg, 17 Wash. 243; s. c. 49 Pac. 499.

[60] Harvey v. Commissioners &c., 32 Kan. 159; s. c. 4 Pac. 153; Hoboken v. Gear, 27 N. J. L. 265. Unless prohibited by the constitution: Douglas Co. v. Timme, 32 Neb. 272; s. c. 49 N. W. 266. Municipal officers, such as policemen, are not public officers within a constitutional provision that no law shall increase or diminish the salary or emoluments of a public officer after his election or appointment: Russell v. Williamsport, 9 Pa. Co. Ct. 129. See further, for a construction of such provisions, State v. Bloxham, 26 Fla. 407; s. c. 7 So. 873; Kirkwood v. Soto, 87 Cal. 394; s. c. 25 Pac. 488; Wren v. Luzerne Co., 9 Pa. Co. Ct. 22; s. c. 6 Kulp (Pa.) 37; Guldin v. Schuylkill Co. (Pa. C. P.), 48 Phila. Leg. Int. 197. Where the power to appoint exists the power to reduce the salary of the appointee for future services exists in the absence of a constitutional or statutory prohibition: Wilson v. City of New York, 65 N. Y. S. 328; s. c. 31 Misc. (N. Y.) 693. The constitution of 1870, Illinois, prohibits a change of salary during the term of office: Stodler v. Fahey, 87 Ill. App. 411; and see City of Louisville v. Wilson, 99 Ky. 598; s. c. 36 S. W. 944. In Illinois an officer's salary can neither be increased nor diminished during the term for which he was elected or appointed, and an ordinance reducing the salary does not take effect until his term expires: City of Roodhouse v. Johnson, 57 Ill. App. 73. But where the law provides that the salary of an officer shall not be diminished during the term for which he was

pelled to take less compensation for his services than that fixed by statute.[61]

§ 174. The same subject continued—Failure of corporate funds.—If no salary is attached to an office in a municipal corporation, the corporation is not liable, as the officers are deemed to have been familiar with the law or ordinance creating the office when they accepted the position, and there is no implied contract for compensation.[62] Where an officer accepts the amount of compensation, his acceptance of that sum estops him from claiming more.[63] If the salary of an

elected, it may be changed before the commencement of his term: Wesch v. Common Council &c., 107 Mich. 149; s. c. 64 N. W. 1051. Such statute does not apply to an officer or employe having no fixed term: City of Lexington v. Rennick, 20 Ky. L. 1924; s. c. 50 S. W. 1106. The city council of the city of Chicago may, by ordinance, fix the term of office of an officer, not exceeding two years, when it has power to appoint such officer, and may fix the salary of such official in the annual appropriation bill for one year, and for each year thereafter, but, having once fixed the salary for the year it can not increase or diminish such salary during the year: Turner v. City of Chicago, 76 Ill. App. 649. That it can not be changed during his term, see Meissner v. Boyle, 20 Utah 316; s. c. 58 Pac. 1110. It has been held, however, that where the law provides that the city council, in February of each year, shall fix the compensation of an employe for the ensuing year and that it shall not be changed during such year, a contract by such officer, made with the mayor, for a different compensation, is invalid: Rettinghouse v. City of Ashland, 106 Wis. 595; s. c. 82 N. W. 555.

[61] People v. Board of Police, 75 N. Y. 38; People v. French, 91 N. Y. 265; Kehn v. State, 93 N. Y. 291. Under the Vermont act of 1884, No. 12, § 2, which provides that highway taxes shall be collected by the town collector when there are no street commissioners, the tax bills were not given by the town to plaintiff, who was first constable and ex officio collector, but were collected by the town treasurer. It was held that where the declaration in a suit for the fees for such collection claimed no agreement for fees as collector, as provided by R. L. Vt., § 2724, nor alleged any services rendered, the town was not liable therefor, and a subsequent promise to pay such fees would be without consideration: Woodward v. Town of Rutland, 61 Vt. 316; s. c. 17 Atl. 797.

[62] Locke v. Central City, 4 Colo. 65; City of Brazil v. McBride, 69 Ind. 244; Doolan v. City of Manitowoc, 48 Wis. 312; s. c. 4 N. W. 475; Jones v. Mayor &c., 8 M. & W. 605; Askin v. London &c., 1 Up. Can. Q. B. 292; Pringle and McDonald, In re, 10 Up. Can. Q. B. 254; Reg. v. Cumberlege, 36 L. T. (N. S.) 700.

[63] Hobbs v. City of Yonkers, 102 N. Y. 13; s. c. 5 N. E. 778; McInery v. City of Galveston, 58 Tex. 334. If an officer renders a bill purporting to cover the whole of his services, but really for less than he is entitled to, and it is allowed and paid, he is debarred from recovering more in the absence of surprise, accident or mistake of fact: O'Hara v. Town of Park River, 1 N. D. 279; s. c. 47 N. W. 380. It has been held that

official is prescribed by an ordinance or by law as being payable in a certain manner or out of certain assessments or taxes, and such assessments or taxes have not been collected, and the corporation is not guilty of negligence in not collecting them, the corporation is not liable for the salary until they have been collected.[64]

the acceptance of less than the salary fixed by law operates as an estoppel from claiming the residue: Hobbs v. City of Yonkers, 102 N. Y. 13; s. c. 5 N. E. 778; O'Hara v. Town of Park River, 1 N. D. 279; s. c. 47 N. W. 380; De Boest v. Gambell, 35 Or. 368; s. c. 58 Pac. 72, 353; McInery v. City of Galveston, 58 Tex. 334. But see Kehn v. State, 93 N. Y. 291; Clark v. State, 142 N. Y. 101; s. c. 36 N. E. 817. A statute authorizing a city to agree with an officer for a salary less than that fixed by law is constitutional (see Pub. L. N. J., p. 161, 2 Gen. St., p. 2123, § 8): Tice v. City of New Brunswick, 64 N. J. L. 399; s. c. 45 Atl. 781. A police matron appointed by ordinance at a fixed salary can not recover the statutory salary fixed for such officer: Daniels v. City of Des Moines, 108 Iowa 484; s. c. 79 N. W. 269. An agreement to take less salary than is provided by law is valid and enforceable: Tice v. City of New Brunswick, 64 N. J. L. 399; s. c. 45 Atl. 781.

[64] Andrews v. United States, 2 Story 202; People v. Supervisors, 1 Hill (N. Y.) 362; Baker v. City of Utica, 19 N. Y. 326; Cumming v. Mayor &c., 11 Paige (N. Y.) 596; Smith v. Commonwealth, 41 Pa. St. 335; Jersey City v. Quaife, 26 N. J. L. 63; United States v. Brown, 9 How. 486; McClung v. St. Paul, 14 Minn. 420. The charter of the city of Buffalo provided that the comptroller should, on or before the 1st day of April in each year, furnish to the council a financial statement for the current year, together with an estimate of the current expenses of each department. Heads of departments were also required to furnish estimates of the amounts required by their respective departments for the current year. The council might amend such estimates, and were required to pass upon them not later than May 1st. The expenditures of each department were required to be kept within the estimates made for it; each office or purpose being debited with the whole sum appropriated, and credited with the salaries and other fixed sums to be paid therefrom, and "the other expenditures" were not to exceed the remainder of the estimate. Contracts for amounts exceeding such remainder should not bind the city as to the excess. The mayor fixed the salary of the secretary of the civil service commission at $600 per annum, payable monthly, but the council only appropriated $50 for the expenses of the commission for the whole year. After paying all the fixed expenses of the mayor's department, a balance remained to its credit of less than the amount of salary due the secretary. It was held that the latter could recover the $50 appropriated for the expenses of the commission and the unexpended balance to the credit of the mayor's fund, but no more: Kip v. City of Buffalo, 7 N. Y. S. 685; s. c. 27 N. Y. St. 52. But a superintendent employed by a village for the erection of a public building can not recover his salary if the statutory certificate that the money necessary was in the village treasury was not issued by the village clerk: Drott v. Riverside, 4 Ohio C. C. 312.

§ 175. The same subject continued—Illustrations.—Where a statute requires the appointment of a town collector pro tempore to be made by writing under the hands of the selectmen, it is not satisfied by a writing signed with the names of all by one selectman, in the absence of the others, and with no other authority than that which is implied by their having agreed that the party should be appointed; and a collector thus appointed can not maintain an action against the town for compensation for his services in collecting the taxes.[65] Where the recorder of a city is vested under the code of the state with concurrent jurisdiction with justices of the peace of all actions, civil and criminal, arising within the corporate limits of the city, and it is provided that he shall receive such fees for his services as may be allowed by law to justices of the peace for like services, except that for his services in criminal prosecutions for violations of ordinances he shall be entitled to recive only such monthly salary as the board of trustees shall by ordinance prescribe, he is vested with a dual jurisdiction as recorder and justice, and the fines he receives for violations of the penal code are to be paid over to the county treasurer, and he

[65] Phelon v. Granville, 140 Mass. 386; s. c. 5 N. E. 269. A city charter provided that the mayor's compensation should be $2,400 per annum, and might be changed, but not during his term of office. It was decided that an ordinance declaring that, after the expiration of the existing term, the mayor should serve without compensation, was void, and that a mayor elected with knowledge of the ordinance could claim a salary, even though as an inducement to his election he had said that he would serve without compensation: State v. Mayor &c., 15 Lea (Tenn.) 697; s. c. 54 Am. R. 427. A statute making no provision for the payment of a school agent, a promise on the part of the town to pay for his services is not implied from the fact of his election and the rendition of service: Talbot v. Inhabitants &c., 76 Maine 415. The aqueduct commissioners of the city of New York have power under the New York statute to employ and dismiss inspectors of the work of constructing the aqueduct, but have no power to suspend such an inspector without pay, there being no provision in the statute for such suspension; and an inspector may recover pay for the time during which he was so suspended: Mullen v. Mayor &c., 12 N. Y. S. 269; s. c. 34 N. Y. St. 913; following Gregory v. Mayor &c., 113 N. Y. 416; s. c. 21 N. E. 119. And although the New York statute authorizes the aqueduct commissioners of New York city to suspend without pay an inspector of the work of constructing the aqueduct, and also authorizes them to appoint and fix the compensation of inspectors, such an inspector, who was suspended, is estopped from claiming his pay where he signed a writing which recited his appointment, and provided that, if he should at any time be suspended, his pay should cease: Phelan v. City of New York, 14 N. Y. S. 785; s. c. 38 N. Y. St. 805.

must be paid for his services as in the case of justices.[66] If the compensation of an officer is not fixed by the laws of the state, his services, if of a strictly official nature, must be gratuitous.[67] It was decided in an Iowa case that where the mayor of an incorporated town was invested by the code of that state with the jurisdiction of justices of the peace in criminal cases, which did not, however, make any provision for compensation, he was not entitled to recover from the county the reasonable value of his services in the hearing and trial of a criminal case in which the prosecution failed.[68]

§ 176. **Miscellaneous instances.**—One who is appointed a member of a committee to superintend the construction of water-works for a city, because of his knowledge and experience as a civil engineer, is not such a public officer as to preclude him from recovering compensation for the services rendered under such appointment, where no compensation therefor has previously been specifically provided.[69]

[66] Prince v. City of Fresno, 88 Cal. 407; s. c. 26 Pac. 606. Under the New York act, passed February 27, 1883, entitled "An act to supply the city of Schenectady with water," and providing for the appointment of three commissioners, who, "for the first year after the commencement of the construction of water-works as hereinafter prescribed, shall each receive such salary as the common council shall fix, . . . which shall not exceed $500," and empowering them to adopt and report any feasible plan for the works, "embracing the purchase of any water-works," the commissioners are entitled to compensation for the adoption and the recommendation to the council of a plan for purchasing works and for their control and management of the works after the purchase: Schermerhorn v. City of Schenectady, 3 N. Y. S. 435; s. c. 50 Hun (N. Y.) 331.

[67] Boyden v. Brookline, 8 Vt. 284; Langdon v. Town of Castleton, 30 Vt. 285; City of Central v. Sears, 2 Colo. 588; Locke v. Central City, 4 Colo. 65.

[68] Howland v. Wright Co., 82 Iowa 164; s. c. 47 N. W. 1086, two judges dissenting.

[69] City of Ellsworth v. Rossiter, 46 Kan. 237; s. c. 26 Pac. 674. See also, Bunn v. People, 45 Ill. 397; Butler v. Regents &c., 32 Wis. 124, 131; State v. Wilson, 29 Ohio St. 347, 349. In the absence of any statutory authority for the suspension of an assistant engineer in the department of public works of the city of New York, appointed under laws of N. Y. 1882, at a certain salary per year, he may recover such salary for the time during which he is so suspended and is not allowed to render service: Morley v. City of New York, 12 N. Y. S. 609; s. c. 35 N. Y. St. 262; Lethbridge v. Mayor &c., 15 N. Y. S. 562; s. c. 39 N. Y. St. 385, where a clerk in a city department maintained an action under similar circumstances. A city having a treasurer duly appointed and qualified under the general act of incorporation can not defeat his right to commissions for disbursement of the municipal funds by placing them in the hands of the mayor for disbursement: Beard v. City of Decatur, 64 Tex. 7; s. c. 53 Am. R.

If there is an omission in a village charter to make provision for compensation to members of a certain board, and it is apparent that such omission was intentional, the members can not recover any compensation.[70] Where an inspector, under suspension without pay, executes a written agreement with aqueduct commissioners which recites his previous appointment, and thereby agrees that if he is suspended or discharged for any cause whatever while in the employ of such commission, his pay as such inspector shall cease from and after the time of such suspension, subject to the direction of the commissioners, he is estopped from claiming the invalidity of the agreement as to any period of suspension which follows its execution.[71]

§ 177. **Extra compensation.**—It has long been a fixed rule of law that one who accepts a public office which has a definite salary attached to it must perform all the duties of the office without extra compensation, and even if after he enters into office his duties are increased he can not compel payment of extra compensation.[72] Where

735. A selectman, overseer of the poor and town agent, secured a pension for one of the town's paupers, and appropriated the amount received, in pursuance of a previous agreement with the pauper, to the settlement of the town's claim against the latter for support. This amount the pauper subsequently recovered from the selectman by suit. It was held that the selectman was not entitled to compensation from the town for the expenses incurred by him in this suit: White v. Inhabitants &c., 77 Maine 396. A person having a fixed salary, certain continuous duties not menial &c., is a public officer: People v. Keller, 61 N. Y. S. 746.

[70] Perry v. Cheboygan, 55 Mich. 250; s. c. 21 N. W. 333. Under the Vermont statute which provides that auditors shall not allow any claim for personal services except when compensation is fixed by law or by vote of the town, a tax-lister can recover only such compensation as the town votes him: Barnes v. Town of Bakersfield, 57 Vt. 375. Chapter 52 of New York laws of 1880, amending the charter of New York City, fixes at $3,000 the salaries of "the clerks of the police courts." This provision has been held not to include the clerk's assistant: Cregier v. Mayor &c., 11 Daly (N. Y.) 171.

[71] Emmitt v. City of New York, 13 N. Y. S. 887; s. c. 38 N. Y. St. 355.

[72] People v. Vilas, 36 N. Y. 459, and cases cited; Mayor &c. v. Kelly, 98 N. Y. 467; Board &c. v. Clark, 92 N. Y. 391; Board &c. v. Quick, 99 N. Y. 138; s. c. 1 N. E. 533; Board &c. v. Johnson, 127 Ind. 238; s. c. 26 N. E. 821; Pierie v. Philadelphia, 139 Pa. St. 573; s. c. 21 Atl. 90; Nuckolls Co. v. Peebler (Neb.), 91 N. W. 289. Right of salaried officer of a public corporation to claim extra compensation on the ground that the duties of his office have been increased or new duties added since his salary was fixed,—see People v. Supervisors, 1 Hill (N. Y.) 362; Wendell v. City of Brooklyn, 29 Barb. (N. Y.) 204; Palmer v. Mayor &c., 2 Sandf. (N. Y.) 318. See also, Andrews v. Pratt, 44 Cal. 309. Right of officer to recover when duty performed is outside of his regular official duty,—see Bright v. Supervisors, 18 Johns. (N. Y.) 242; Mallory v. Supervisors,

an officer's fees are fixed for an actual day's work, and his duties embrace the work of two or more departments, he can not recover further compensation than the amount fixed by statute.[73] Where a constitutional provision forbids a municipality to pay or grant any extra compensation to a public officer, or to increase his compensation during his continuance in office, it has been decided that a city council, the members of which receive no regular pay, has no right to vote compensation to members for special services performed as a committee.[74] Where the statute provides that mechanics, workmen and laborers of a municipal incorporation, or for a contractor of the corporation, shall receive the prevailing wages, such statute has no reference to an appointee who receives a regular salary.[75] When an officer's compensation is fixed, and the law pro-

2 Cow. (N. Y.) 531; People v. Supervisors, 12 Wend. (N. Y.) 257.

[73] Under the Indiana statute of 1879, providing that the per diem of township trustees for each actual day's service shall be $2, to be paid out of the township fund, and that for services as overseer of the poor he shall be paid out of the county treasury, one who is the duly elected township trustee, and has been paid $2 per day out of the township fund for his services, can not claim a further compensation out of the county treasury, for the same time, for services as overseer of the poor: Board &c. v. Templeton, 116 Ind. 369; s. c. 19 N. E. 183. If extra services are performed by direction of the proper authorities, having no connection with the duties of the office, the officer may be allowed compensation therefor: United States v. Austin, 2 Cliff. 325; United States v. Chassell, 6 Blatchf. 421. In case of an emergency which involves the corporate existence it is within the power of the mayor and council to employ counsel to protect its interests: Rice v. Gwinn (Idaho), 49 Pac. 412. Employment of assistant counsel several times by the judiciary committee of the council, which was approved and ratified by the council, does not establish a custom binding on the city where an ordinance provides that such employment shall be at the discretion of the mayor or council: Caswell v. City of Marshalltown, 101 Iowa 598; s. c. 70 N. W. 717.

[74] Garvie v. City of Hartford, 54 Conn. 440; s. c. 7 Atl. 723. Where a statute fixes the city treasurer's salary, and says that he shall not receive "any other fee or reward whatever," he can claim nothing for collections of county taxes which it is made his duty to collect as such officer: City of Poughkeepsie v. Wiltsie, 36 Hun (N. Y.) 270. But when the functions of two appointments or offices are separate and distinct, one person may be entitled to recover compensation for both: Marvin v. United States, 44 Fed. 405.

[75] Rock v. City of New York, 63 N. Y. S. 825. To the same effect is Bock v. City of New York, 64 N. Y. S. 777; s. c. 31 Misc. (N. Y.) 55. The New York laws of 1897, ch. 415, applies to laborers, mechanics and workmen of municipalities engaged on public works, as well as employes of contractors with the city to do like work: McAvoy v. City of New York, 65 N. Y. S. 274; s. c. 52 App. Div. (N. Y.) 485. The right of an employe to receive the prevailing rate of wages given by stat-

vides that no other compensation shall be allowed, he is not entitled to interest on public funds deposited by him in a bank, either as compensation, or for care of public fund, or liability for losses.[76] Where the charter provides that in case of the absence of the mayor, the president of the council, or speaker of the house of delegates, if the former be absent, shall perform the duties of mayor and receive the same compensation as the mayor while so acting, it does not mean that the salary shall accrue to the acting officer during the interim and does not mean that any absence of the mayor shall cause a reduction in his salary.[77] In the absence of express or implied authority, and where the expenditures of a member of the council are not necessarily essential for municipal purposes, the council has no legal warrant to authorize payment.[78] Knowledge of the mayor and aldermen that an officer is performing certain services does not entitle him to compensation beyond that fixed by the ordinances.[79] The evidence must clearly show that one claiming a salary larger than heretofore received is entitled to such advance.[80] In a suit by an employe to recover notarial fees, in addition to his regular salary, the burden of proof that such services as notary were voluntary is on the defendant.[81] Where an officer receives an annual salary he is not entitled to pay for extra services rendered on Sunday in the absence of a statute allowing it.[82]

ute is not a vested right and may be repealed, and after such repeal the right to recover prevailing wages for services rendered prior thereto in an action brought thereafter will not be sustained: Bock v. City of New York, 64 N. Y. S. 777; s. c. 31 Misc. (N. Y.) 55. A person who is in the performance of labor in lieu of his poll-tax is a laborer of the city and comes under the relationship of employer and employe: City of Winfield v. Peeden, 8 Kan. App. 671; s. c. 57 Pac. 131. Unless a person is hired as a mechanic and does mechanic's work, he is not to be regarded as such and entitled to the benefits of New York laws of 1894, ch. 622, regarding wages of mechanics: McCunney v. City of New York, 58 N. Y. S. 138; s. c. 40 App. Div. (N. Y.) 482. A driver of a street wagon and engaged in the care of the city's horses can not recover from the city for failing to keep him employed. He is not an officer, though appointed by resolution, and is not entitled to pay for time he does not work: White v. City of Alameda, 124 Cal. 95; s. c. 56 Pac. 795.

[76] Village of Glenville v. Englehart, 19 Ohio C. C. 285.

[77] Bates v. City of St. Louis, 153 Mo. 18; s. c. 54 S. W. 439.

[78] James v. City of Seattle, 22 Wash. 654; s. c. 62 Pac. 84.

[79] Clark v. City of Portsmouth, 68 N. H. 263; s. c. 44 Atl. 388.

[80] State v. Brittin, 52 La. An. 94; s. c. 26 So. 753.

[81] Merzbach v. City of New York, 163 N. Y. 16; s. c. 57 N. E. 96.

[82] Tyrrell v. City of New York, 159 N. Y. 239; s. c. 53 N. E. 1111. The general rule is that officers on salary are not entitled to charge for services: O'Sullivan v. City of New Orleans, 49 La. An. 616; s. c. 21 So. 854. As to extra allowance to com-

§ 178. **Compensation of attorneys.**—A public corporation, unless restrained by its charter, has the power to employ attorneys to conduct and carry on such legal business as comes within its corporate capacity;[83] and it is bound to pay for such services.[84] Likewise such corporation may employ extra counsel to prosecute or defend certain suits or to do certain legal work either in conjunction with the city solicitor or alone.[85] Where a charter gives power to a municipal corporation to employ an attorney when necessary, and a subsequent chapter provides for a law department, and a chief officer to be called the attorney and counsel, with a salary, the department to have charge of and conduct all the law business of the corporation, the subsequent chapter is an implied repeal of the power to employ an attorney under the charter.[86] The retaining of extra counsel must be authorized by the corporation.[87]

missioners of estimate and assessment under charter of Greater New York, see In re Board of Street Opening &c., 53 N. Y. S. 354; s. c. 33 App. Div. (N. Y.) 137. Hostlers only under N. Y. laws of 1894, ch. 368, are entitled to extra pay: Tyrrell v. City of New York, 159 N. Y. 239; s. c. 53 N. E. 1111. Where a person is illegally discharged and is reinstated he can not recover costs and counsel fees in addition to his salary: O'Hara v. City of New York, 59 N. Y. S. 36; s. c. 28 Misc. (N. Y.) 258. Where a city officer, acting under a salary, is vested with the powers of a justice of the peace he is not entitled to justice fees: Johnson v. State, 94 Tenn. 499; s. c. 29 S. W. 963. A police officer on a salary is not entitled to the fees of a constable, although he has the powers vested in him as a constable: Johnson v. State, 94 Tenn. 499; s. c. 29 S. W. 963.

[83] State v. Mayor &c., 40 N. J. L. 186; Smith v. Mayor &c., 13 Cal. 531.

[84] Langdon v. Town of Castleton, 30 Vt. 285.

[85] Hugg v. City Council &c., 29 N. J. Eq. 6. See also, Curtis v. Gowan, 34 Ill. App. 516.

[86] Lyddy v. Long Island City, 104 N. Y. 218; s. c. 10 N. E. 155. Where an action was brought by a city attorney to recover for services performed for the city, it was decided that the preparation of a digest or a codification of the laws applicable to such city was within the line of his duty as laid down by the city charter, which provided that he "should do all and every professional act incident to the office which might be required of him" by the officers of said city: Hays v. City of Oil City (Pa.), 11 Atl. 63.

[87] City of Memphis v. Adams, 9 Heisk. (Tenn.) 518; s. c. 24 Am. R. 331; Clarke v. Lyon Co., 8 Nev. 181; City of Memphis v. Brown, 20 Wall. 289, 321. See Roper v. Town of Laurinburg, 90 N. C. 427; Waterbury v. City of Laredo, 60 Tex. 519. See also, Hornblower v. Duden, 35 Cal. 664, 666; Clough v. Hart, 8 Kan. 487. Compensation of city attorney, —see Orton v. State, 12 Wis. 509; Carroll v. City of St. Louis, 12 Mo. 444; Dillon Munic. Corp. (4th ed.), chapter on Corporate Officers. Where the mayor may be employed as attorney and counsel,—see Mayor &c. v. Muzzy, 33 Mich. 61; s. c. 20 Am. R. 670. If a county attorney goes beyond the limits of his county with the consent and at the instance of the county board, he may recover

§ 179. **The same subject continued.**—The duties and compensation of attorneys are generally regulated or fixed by statute or ordinance. And a state statute which, without limitation, gave the city attorney of a city fees for the trial of cases, was held in a Connecticut case not to be restricted in its application to cases tried in the city courts.[88] Where a city has power to allow its attorney "fees," it may also allow him a commission on all sums of money collected for the city; and under an ordinance authorizing such allowance, no distinction can be taken between collections in civil and in criminal cases.[89] When it is forbidden by statute to increase the compensation of the attorney for the city during his term of office, the fact that the city advances from the second to the first class during the attorney's term of office does not abrogate the statutory prohibition.[90]

reasonable compensation in addition to his salary: Commissioners &c. v. Brewer, 9 Kan. 307; White v. Polk Co., 17 Iowa 413; Butler v. Board &c., 15 Kan. 178; Huffman v. Board &c., 23 Kan. 281.

[88] Smith v. City of Waterbury, 54 Conn. 174; s. c. 7 Atl. 17. In the last cited case it was held that the words "continuance in office," in the constitution of Connecticut, amendment 24, prohibiting the legislature from increasing the salary of any public officer during his "continuance in office," mean continuing office under one appointment; and the act of 1881, providing that "the city attorney [of Waterbury] shall be entitled to fees for his services in cases tried for the city," is not unconstitutional, so far as it affects that officer upon his re-appointment to that position in 1881, at the expiration of his former term. And also that a statute giving a city attorney fees for "cases tried for said city" is not restricted in application to technical "cases" in courts of justice, but applies also to a trial of certain matters for the city before a railroad commission.

[89] City of Austin v. Johns, 62 Tex. 179. Under an ordinance which gives a city attorney ten per cent. on all sums of money collected for the city, such percentage is not restricted to sums which the attorney actually assisted to collect: City of Austin v. Walton, 68 Tex. 507; s. c. 5 S. W. 70, where it was also decided that an ordinance which gives a city attorney ten per cent. of all sums of money collected for the city is not repugnant to a subsequent ordinance giving him a salary and fees in addition in specified cases, and is not impliedly repealed thereby. - - - A city ordinance, passed in 1880, gave the city attorney a salary in lieu of all other compensation. A subsequent statute gave him fees for the trial of cases. It was held that the compensation given by the statute, not being in terms in lieu of all other compensation, was cumulative, and that the city attorney was entitled both to the salary given by the ordinance and the trial fees given by the statute: Smith v. City of Waterbury, 54 Conn. 174; s. c. 7 Atl. 17.

[90] Under an Arkansas statute which provided that a city council should not increase the salary of a city officer during his term in office, when the council of a city of the second class had fixed the salary of the city attorney, it could not, after becoming a city of the first class, increase his salary during his term in

§ 180. Compensation—Power of legislature to control.—The state legislature, except as restrained by the constitution, has the power to increase, diminish, or cut off entirely, the salary of an official.[91] Likewise the legislature may increase the duties without enhancing the compensation, or may diminish the compensation without lessening the duties.[92]

office: Barnes v. Williams, 53 Ark. 205; s. c. 13 S. W. 845.

[91] Swann v. Buck, 40 Miss. 268; Connor v. Mayor &c., 5 N. Y. 285; affirming s. c. 2 Sandf. (N. Y.) 355; People v. Morrell, 21 Wend. (N. Y.) 563; People v. Warner, 7 Hill (N. Y.) 81; s. c. 2 Denio (N. Y.) 272; Phillips v. Mayor &c., 1 Hilt. (N. Y.) 483; Smith v. New York, 37 N. Y. 518; Butler v. Pennsylvania, 10 How. 402; Cooley Const. Lim. 276; People v. Mahaney, 13 Mich. 481; Bird v. Wasco Co., 3 Or. 282; Oregon v. Pyle, 1 Or. 149; Coffin v. State, 7 Ind. 157; Turpen v. County Com'rs, 7 Ind. 172; Cowdin v. Huff, 10 Ind. 83; Bryan v. Cattell, 15 Iowa 538, 553, per Wright, C. J.; Cotton v. Ellis, 7 Jones L. (N. C.) 545; Hoke v. Henderson, 4 Dev. (N. C.) 1. Police officers of cities are not within the constitutional provision forbidding legislation to change the compensation of public officers while in office: Mangam v. Brooklyn, 98 N. Y. 585; s. c. 50 Am. R. 705. An officer who held over, and discharged his official duties until his successor qualified, was held to be entitled to pay for his services, although there was no such provision of law: Robb v. Carter, 65 Md. 321; s. c. 4 Atl. 282. Held that city attorney of New Orleans, in office at the adoption of the new constitution of 1898, was limited to salary under constitution and laws of 1879: State v. Brittin, 52 La. An. 94; s. c. 26 So. 753. Construction of Madison city charter in reference to payment of salary of surveyor: Kollock v. Dodge, 105 Wis. 187; s. c. 80 N. W. 608. Officers have no vested rights in future unearned compensation: In re Wilkins Place, 54 N. Y. S. 65. Services rendered outside the city but for the city create a liability: Quigg v. Evans, 121 Cal. 546; s. c. 53 Pac. 1093.

[92] State v. Davis, 44 Mo. 129; Hyde v. State, 52 Miss. 665; Wilcox v. Rodman, 46 Mo. 322; Sharpe v. Robertson, 5 Gratt. (Va.) 518. The California statute of 1883 provided that marshals of cities of the sixth class should receive a compensation to be fixed by ordinance by the board of trustees; also prescribed the marshal's duties, and provided that he should, for service of any process, receive the same fees as constables. The court decided that the compensation fixed by the trustees under the statute was for all duties imposed on the marshal: Mundell v. City of Pasadena, 87 Cal. 520; s. c. 25 Pac. 1061. Under the New York statute authorizing the aqueduct commissioners of the city of New York to appoint and fix the compensation of inspectors of the work of constructing the aqueduct, the commissioners have no power to suspend such an inspector without pay, there being no provision in the statute for such suspension; and an inspector may recover pay for the time during which he was so suspended: Emmitt v. City of New York, 13 N. Y. S. 887; s. c. 38 N. Y. St. 355; following Mullen v. Mayor &c., 12 N. Y. S. 269; s. c. 34 N. Y. St. 913. Under the California statute of 1883, municipal corporations are divided into classes, and by the same

§ 181. **Compensation in case of removal.**—Where an officer was illegally removed from office and was reinstated, and was at all times ready and willing to discharge his duties, he is entitled to compensation for the time he was kept from his duties.[93] And where an officer is subject to civil service law, is illegally reduced in rank and salary, and is reinstated, he is entitled to his original salary, the compensation being an incident to the office.[94] Where, after his term expired, an officer continued to render services with knowledge of the city council, the members of which expressed satisfaction, and when his bill for services was presented, made no objection, there is an implied promise to pay.[95] Where two cities consolidate, an employe of one of the cities, who occupied a subordinate position, and who does not apply for reinstatement under the charter of consolidation, and performs no services thereunder, is not entitled to a salary for the time after the consolidation.[96] An appointee unlawfully removed, who has made no complaint to the mayor or council and no attempt to secure reinstatement, can not recover salary for the period when no services were rendered.[97] It has been held, however, that an unlawful removal creates no vacancy; and where no one else is appointed to the position and paid for performing the duties, the salary may be recovered.[98] After the removal of a city officer and the filling of his place by another, to whom the salary has been paid, such officer can not maintain suit for salary accruing after the removal until he has been declared entitled to the office in a direct proceeding for that purpose.[99]

act the board of trustees of cities of the fifth and sixth classes are authorized to fix by ordinance the compensation of city marshals. In an action by the marshal of a city (of the sixth class) to recover for services rendered, the complaint failed to state that the board of trustees of such city had passed any ordinance fixing the compensation of the marshal, or to state to what class of municipal corporations such city belonged. It was decided that the complaint was demurrable: Pritchett v. Stanislaus Co., 73 Cal. 310; s. c. 14 Pac. 795.

[93] O'Hara v. City of New York, 59 N. Y. S. 36; s. c. 28 Misc. (N. Y.) 258.

[94] People v. Feitner, 63 N. Y. S. 209; s. c. 49 App. Div. (N. Y.) 101.

[95] Buck v. City of Eureka, 124 Cal. 61; s. c. 56 Pac. 612.

[96] Quinhard v. City of New York, 64 N. Y. S. 904, 51 App. Div. (N. Y.) 233.

[97] Byrnes v. City of St. Paul, 78 Minn. 205; s. c. 80 N. W. 959. Cf. Hagan v. City of Brooklyn, 126 N. Y. 643; s. c. 27 N. E. 265; Phillips v. City of Boston, 150 Mass. 491; s. c. 23 N. E. 202; Bernard v. City of Hoboken, 27 N. J. L. 413.

[98] O'Hara v. City of New York, 62 N. Y. S. 146; s. c. 46 App. Div. (N. Y.) 518.

[99] Gorley v. City of Louisville, 20 Ky. L. 602; s. c. 47 S. W. 263. The general rule is that compensation ceases with removal from office: State v. Williams, 6 S. D. 119; s. c. 60 N. W. 410.

§ 182. Qualifications for office-holding.—Where neither by constitution nor by statute are the qualifications for office prescribed, any one is eligible who possesses the elective franchise. It may happen, therefore, that one may be an officer who is not a citizen of the United States; for in a number of the states aliens, who have declared their intention to become citizens, and have the qualification of residence, are given the franchise.[100] The state constitution or statutes generally lay down the qualifications of officers.[101] Eligibility to office belongs not exclusively or specially to electors enjoying the right of suffrage: it belongs equally to all persons whomsoever are not excluded by the constitution,[102] and can not be changed by any ordinance or acts of the corporation.[103] If the statute provides that the accept-

[100] McCarthy v. Froelke, 63 Ind. 507.

[101] State v. Murray, 28 Wis. 96; State v. Smith, 14 Wis. 497; Wheat v. Smith, 50 Ark. 266; s. c. 7 S. W. 161; Hannon v. Grizzard, 89 N. C. 115. Cf. Darrow v. People, 8 Colo. 417; s. c. 8 Pac. 661; People v. Hamilton, 24 Ill. App. 609. If a person already holding an office is elected or appointed to another incompatible with the one which he holds, and he accepts and qualifies to the second, such acceptance and qualification operate, ipso facto, as a resignation of the former office: State v. Brinkerhoff, 66 Tex. 45; s. c. 17 S. W. 109. Cf. Attorney-General v. Marston, 66 N. H. 485; s. c. 22 Atl. 560; People v. Hanifan, 96 Ill. 420; King v. Tizzard, 9 B. & C. 418; Milward v. Thatcher, 2 T. R. 87. See De Turk v. Commonwealth, 12 Pa. St. 151; s. c. 18 Atl. 757; Cotton v. Phillips, 56 N. H. 220. Sometimes it is provided that no person shall hold two lucrative offices, or offices in two departments of the government, at the same time: Davenport v. Mayor &c., 67 N. Y. 456; People v. Brooklyn Common Council, 77 N. Y. 503; s. c. 33 Am. R. 659; Re Corliss, 11 R. I. 638; Dailey v. State, 8 Blackf. (Ind.) 329; Rodman v. Harcourt, 4 B. Mon. (Ky.) 224, 499; State v. De Gress, 53 Tex. 387; State v. Clarke, 3 Nev. 566; People v. Leonard, 73 Cal. 230; s. c. 14 Pac. 853; Creighton v. Piper, 14 Ind. 182; Kerr v. Jones, 19 Ind. 351; Howard v. Shoemaker, 35 Ind. 111; State v. Kirk, 44 Ind. 401; Foltz v. Kerlin, 105 Ind. 221; s. c. 4 N. E. 439; 5 N. E. 672; People v. Whitman, 10 Cal. 38; People v. Sanderson, 30 Cal. 160; Crawford v. Dunbar, 52 Cal. 36; Hoglan v. Carpenter, 4 Bush (Ky.) 89. Women may be school officers in Massachusetts: 115 Mass. 602; also in Iowa: Huff v. Cook, 44 Iowa 639.

[102] Barker v. People, 3 Cow. (N. Y.) 686, 703. See State v. George, 23 Fla. 585; s. c. 3 So. 81.

[103] People v. Phillips, 1 Denio (N. Y.) 388; Petty v. Looker, 21 N. Y. 267; Commonwealth v. Woelper, 3 S. & R. (Pa.) 29; Rex v. Spencer, 3 Burr. 1827; Newling v. Francis, 3 T. R. 189; Rex v. Bumstead, 2 B. & Ad. 699; Rex v. Chitty, 5 Ad. & El. 609; Rex v. Weymouth, 7 Mod. 373. Where the charter of a city provides that the mayor, recorder and aldermen, when assembled, shall constitute the common council, and further provides that the common council shall be judge of the election and qualification of its members, this power extends to the election and qualification of the mayor; and being conclusive, the court will not grant a quo warranto after the coun-

ance by an officer of another office shall cause the first office to become vacant, the acceptance disqualifies such officer from further acting in his original capacity, and without a judicial determination.[104] Where the law provides that no person shall be eligible to the office of alderman unless he shall have been a resident of his ward for at least one year preceding such election, it means one year next preceding the election.[105]

§ 183. **Official oath.**—Public officers are usually required by statute to take an oath before entering upon the duties of the office.[106] Where the form is prescribed by law it should be substantially followed; a literal adherence is not necessary,[107] but a material variation

cil has taken action: Dafoe v. Harshaw, 60 Mich. 200; s. c. 26 N. W. 879. When the government of a city or town is controlled by the general municipal incorporation act of Florida, neither six months' residence nor registration is requisite to eligibility to office in such city or town, in the absence of any constitutional or statutory provision to that effect: State v. George, 23 Fla. 585; s. c. 3 So. 81. The legislature incorporating a town may appoint the officers to exercise their functions until a regular election, notwithstanding the constitution provides that town officers shall be elected by the electors of such towns: Roche v. Jones, 87 Va. 484; s. c. 12 S. E. 965. Where the law provides that no person shall be elected to a city office who is at the time in arrears in his city taxes, a person who pays his arrears at 9 o'clock on the morning of the election is not disqualified: State v. Berkeley, 140 Mo. 184; s. c. 41 S. W. 732. But not so if not paid until after election: State v. Page, 140 Mo. 501; s. c. 41 S. W. 963. One who owns and pays taxes on personalty and who owns realty, but is not liable for taxes for the current year by reason of acquirement since the date of assessment, is eligible for mayor under a statute requiring the mayor to be a taxpaying freeholder: Mayer v. Sweeney, 22 Mont. 103; s. c. 55 Pac. 913. Where a charter requires a residence of three years in the city as a condition to eligibility, one who has resided three years in territory annexed to the city is eligible: Gibson v. Wood, 20 Ky. L. 1547; s. c. 49 S. W. 768. That an officer elected has qualified is not to be presumed, but must be shown: O'Connor v. City of Fond du Lac, 101 Wis. 83; s. c. 76 N. W. 1116. In the absence of a statute a person may hold two offices: Santa Ana Water Co. v. Town of San Buena Ventura, 65 Fed. 323. A nonresident of state can not hold office: Barker v. Southern Const. Co., 20 Ky. L. 796; s. c. 47 S. W. 608. Oath must be filed with the clerk of the village under N. Y. laws of 1892, ch. 687, § 3, instead of with the clerk of the county: In re Board of Health &c., 60 N. Y. S. 27; s. c. 43 App. Div. (N. Y.) 236.

[104] Oliver v. Mayor &c., 63 N. J. L. 96; s. c. 42 Atl. 782; Bishop v. State, 149 Ind. 223; s. c. 48 N. E. 1038; 39 L. R. A. 278; 63 Am. St. 270.

[105] Dowty v. Pittwood, 23 Mont. 113; s. c. 57 Pac. 727.

[106] The subject of Official Bonds is discussed in a special chapter, post.

[107] State v. City of Trenton, 35 N. J. L. 485; Bassett v. Den, 17 N. J. L. 432; Tide Water Canal Co. v. Archer, 9 Gill & J. (Md.) 479; Hankins v. Calloway, 88 Ill. 155.

will invalidate the oath.[108] It need not be in writing or subscribed unless the statute expressly so provides.[109] The officer who is required to administer the oath can not lawfully refuse to do so on account of the ineligibility of the person elected.[110]

§ **184. The same subject continued**—According to the weight of authority in this country, statutory provisions fixing the time within which an official oath must be taken are construed to be directory; and a delay does not ipso facto vacate the office, provided the oath is taken before the office is declared vacant by judicial proceedings.[111] But a contrary doctrine is declared in several cases, holding that such statutes are not directory where the delay is caused by neglect or refusal.[112] A statute requiring an oath to be administered by a particular officer was decided in New York to be directory, and it was held that the oath might be taken before any officer authorized by a general statute.[113]

§ **185. Duties of officers.**—As a rule, the duties of officers are fixed by the ordinance or statute creating them; but in a New York case[114]

[108] State v. City of Trenton, 35 N. J. L. 485; Bowler v. Perrin, 47 Mich. 154; s. c. 10 N. W. 180; Chapman v. Clark, 49 Mich. 305; s. c. 13 N. W. 601; Bohlman v. Railway Co., 40 Wis. 157. An oath "faithfully to discharge their duties" does not fulfill a prescribed form to discharge their duties "impartially, and to the best of their judgment": In re Cambria Street, 75 Pa. St. 357. See, for other defects pronounced merely formal, Horton v. Parsons, 37 Hun (N. Y.) 42, a strong case; Colman v. Shattuck, 62 N. Y. 348; People v. Stowell, 9 Abb. N. C. (N. Y.) 456; Hoagland v. Culvert, 20 N. J. L. 387; People v. Perkins, 85 Cal. 509; s. c. 26 Pac. 245; Bassett v. Den, 17 N. J. L. 432. And for evidence that the oath has been taken, Halbeck v. Mayor &c., 10 Abb. Pr. (N. Y.) 439; Harwood v. Marshall, 9 Md. 83; Scammon v. Scammon, 28 N. H. 419; State v. Green, 15 N. J. L. 88.

[109] Davis v. Berger, 54 Mich. 652; s. c. 20 N. W. 629.

[110] People v. Dean, 3 Wend. (N. Y.) 438, case of an infant. See also, Miller v. Supervisors, 25 Cal. 93.

[111] Throop Public Officers, § 173, and numerous cases there cited.

[112] Throop Public Officers, §§ 173, 174, 175; citing (on p. 188) State v. Matheny, 7 Kan. 327; Courser v. Powers, 34 Vt. 517, where a justice of the peace, sued for an arrest, could not justify unless he had taken the oath of office before the arrest, although he took it on the same day. The oath need not be taken while a contest is pending to determine who is legally entitled to the office: Mechem Public Offices and Officers, § 262; citing People v. Potter, 63 Cal. 127; Pearson v. Wilson, 57 Miss. 848.

[113] Ex parte Heath, 3 Hill (N. Y.) 42; Canniff v. Mayor &c., 4 E. D. Smith (N. Y.) 430. See also, State v. Stanley, 66 N. C. 59; and contra, Rex v. Ellis, 9 East 252, note; s. c. 2 Str. 994. But irregularities of this nature do not prevent the application of the rule validating acts of de facto officers: State v. Perkins, 24 N. J. L. 409.

[114] People v. Cook, 14 Barb. (N. Y.) 259; s. c. 8 N. Y. 67.

it was held that "statutes directing the mode of proceeding by public officers are directory, and are not regarded as essential to the validity of the proceedings themselves unless it be so declared in the statute." Where from the nature of the office the officer is called upon to exercise duties involving judgment and discretion, he can not delegate his power.[115] Where all the legitimate lights for ascertaining the meaning of the constitution have been made use of, it may still happen that the construction remains a matter of doubt; and in such a case every one called upon to act, where, in his opinion, the proposed action would be of doubtful constitutionality, is bound upon the doubt alone to abstain from acting.[116] It is frequently provided by statute that the incumbents of certain municipal offices shall not be in any manner interested in contracts for which the corporation is liable: these statutes are generally strictly construed.[117]

§ **186. Powers of mayor.**—The mayor is the chief officer or executive magistrate of the corporation, and his powers depend entirely

[115] The duty to examine and pass upon resolutions and ordinances of the common council, and determine whether they shall be approved, imposed by the city charter on the mayor, is a duty calling for the exercise of his judgment and experience, and can not be delegated to the mayor's clerk: Lyth v. City of Buffalo, 48 Hun (N. Y.) 175. The mayor of Hudson, not being one of the officials designated in laws of New York of 1890, was not obliged to take the test oath required of such officials by § 3 of the same act: People v. Gregg, 13 N. Y. S. 114; s. c. 59 Hun (N. Y.) 107.

[116] Cooley Const. Lim. (6th ed.), ch. 4, p. 88. The revised statutes of Indiana make it the duty of a township trustee to grant temporary relief to one, not an inhabitant of the township, who is sick or in distress, and without money or friends, etc. It was decided that the trustee is not precluded from acting by the fact that such a person has been received into a house from charitable motives, and has been and is being cared for: Board &c. v. Jennings, 104 Ind. 108; s. c. 3 N. E. 619. The fact that a supervisor, at the request of citizens of the town, built a sidewalk at the expense of the town, did not impose on him any duty to repair as an individual; that duty rested upon the persons who directed him to build the walk: Langdon v. Chartiers Tp., 131 Pa. St. 77; s. c. 18 Atl. 930; 25 W. N. C. (Pa.) 202.

[117] The New York acts of 1882 declare that no clerk in the employ of New York City shall become interested in the performance of any contract, work or business, the price of which is payable by the city. It was held that a clerk could not become a lecturer in an evening school under an appointment from the board of education: McAdam v. Mayor &c., 36 Hun (N. Y.) 340. New York laws of 1882 prohibit an officer of the corporation of New York from being interested in the performance of any work to be paid for from the city treasury. It was held that an examiner in lunacy could not be a sanitary inspector in the vaccinating corps: Fitch v. Mayor &c., 40 Hun (N. Y.) 512.

upon the provisions of the charter or constituent act of the corporation and valid by-laws passed in pursuance thereof;[118] and although his duties are primarily executive and administrative, judicial duties are often superadded to those which properly appertain to the office of mayor; and he is invested by legislative enactment with the authority to administer not only the ordinances of the corporation, but also judicially to administer the laws of the state.[119]

[118] Dillon Munic. Corp. (4th ed.) 291.

[119] Dillon Munic. Corp. (4th ed.) 291, 292; Waldo v. Wallace, 12 Ind. 569. See also, Slater v. Wood, 9 Bosw. (N. Y.) 15; Morrison v. McDonald, 21 Maine 550; Respublica v. Dallas, 3 Yeates (Pa.) 300; State v. Wilmington, 3 Harr. (Del.) 294; Shafer v. Mumma, 17 Md. 331; Luehrman v. Taxing District, 2 Lea (Tenn.) 425; Reynolds v. Baldwin, 1 La. An. 162; Howard v. Shoemaker, 35 Ind. 111; Gulick v. New, 14 Ind. 93; Prell v. McDonald, 7 Kan. 426; Martindale v. Palmer, 52 Ind. 411. The power to take general affidavits vested in justices of the peace by the Arkansas statutes (Mansf. Dig., § 2918) may be exercised by the mayors of incorporated towns within the limits of their corporations, by virtue of the statute (Mansf. Dig., § 797) which confers upon such mayors "all the powers and jurisdiction of a justice of the peace in all matters, civil and criminal, arising under the laws of the state, to all intents and purposes." Such mayor may consequently take an affidavit to be used in prosecuting an appeal from a judgment of the county court to the circuit court: Robinson v. Benton Co., 49 Ark. 49; s. c. 4 S. W. 195. When the mayor has judicial authority to conduct criminal examinations he is not personally liable in damages for refusal to proceed with an examination until the following day, and to accept bail, and for directing that the accused be locked up until the following day: Hommert v. Gleason, 14 N. Y. S. 568. If he has acquired complete jurisdiction he enjoys the same immunity from personal liability for subsequent excesses of authority that is accorded to the judges of courts generally: State v. Wolever, 127 Ind. 306; s. c. 26 N. E. 762. For the history and nature of office of mayor, see Dillon Munic. Corp. (4th ed.), §§ 13, 174, 253, 260, 271, 331, 428; Norton Com. 90, 402, 403; Pulling Laws, Customs &c. of London, ch. 2, 16 m; 2 Bouvier Law Dict. 150; 4 Jacobs Law Dict. 264, 265; 2 Toml. Law Dict. 540; Fletcher v. City of Lowell, 15 Gray (Mass.) 103; Ela v. Smith, 5 Gray (Mass.) 121; Nichols v. Boston, 98 Mass. 39; Cochran v. McCleary, 22 Iowa 75, 82. Under the code of Iowa, § 506, providing that "the mayor of each city or incorporated town shall be a magistrate or conservator of the peace, and, within the same, have the jurisdiction of a justice of the peace in all matters civil and criminal; . . . but the criminal jurisdiction shall be coextensive with the county in which such city or town is situated," it was held that the mayor is given the same jurisdiction in civil cases as a justice of the peace; and, therefore, his jurisdiction extends to a case brought before him by a resident of his incorporated town against a resident of the county, but not of the corporation nor of the township in which it is situated, by a notice served on the defendant within his township, but outside the limits of the corporation, and of the

§ 187. The same subject continued—Statutory provisions.—It is often provided by statute that the duties of the mayor shall fall, in his absence, upon the president of the council or a similar officer.[120] The New York statute, authorizing the mayor of each city to prescribe civil service rules and to employ suitable persons to make inquiries and examinations and prescribe their duties, gives the mayor power to designate a secretary for the civil service commission appointed by him under the act and to fix his salary.[121] The mayor and city council of a Nebraska city have power to compromise claims against the city arising under a contract to erect a system of water-works for the city.[122] The mayor may administer oaths to city officers; and

township wherein it is situated: Weber v. Hamilton, 72 Iowa 577; s. c. 34 N. W. 424.

[120] Upon an issue as to title to a municipal office, the power of appointment to which is vested in the mayor, proof of appointment by the president of the council, who is authorized to act as mayor in certain cases, is not sufficient without showing the facts upon which the right to exercise such power depends: State v. Board of Health (N. J.), 8 Atl. 509. Where the charter provides that in case of the absence of the mayor from the city another officer shall act in his place, only such an absence as will render the mayor unable to perfom his duties is intended: Mayor &c. v. Moran, 46 Mich. 213; s. c. 9 N. W. 252. Under a provision in the charter of Jersey City authorizing the president of the council to act as mayor in the absence of the latter from the city, except in making certain appointments, the president may issue a proclamation as mayor pro tempore, submitting the adoption of the act to the voters of the city, that power being vested in the mayor by said act: In re Cleveland, 51 N. J. L. 319; s. c. 18 Atl. 67. The New Jersey statute, approved 1889, authorizes the mayors of the cities of the state to appoint the principal municipal officers, in case the act should be accepted at a popular election, and authorizes the respective mayors of the cities, by proclamation, to call such election. It was decided that in case the mayor was absent, and the charter, in such contingency, vested the powers of the mayoralty in a specified officer, such officer could proclaim the election: In re Cleveland, 52 N. J. L. 188; s. c. 19 Atl. 17. See also, In re Cleveland, 51 N. J. L. 319; s. c. 18 Atl. 67.

[121] Kip v. City of Buffalo, 7 N. Y. S. 685; s. c. 27 N. Y. St. 52. A mayor, supposing that he had power to make an ad interim appointment of a city officer, attempted to exercise that power, and that alone. But it was held that, if he did not have the power which he attempted to exercise, the appointment could not be deemed an appointment for a full term, which the mayor had the power, but not the intention to make: People v. Hall, 104 N. Y. 170; s. c. 10 N. E. 135.

[122] State v. Martin, 27 Neb. 441; s. c. 43 N. W. 244. The mayor of a city of the first class does not have the authority to suspend the city engineer under compiled laws of Kansas, ch. 18, defining the powers of mayors of such cities and vesting such authority in the corporation itself: Metsker v. Neally, 41 Kan. 122; s. c. 21 Pac. 206. Under the general statutes of New Hampshire, ch. 42, § 3, mayors of cities are authorized to administer oaths to al-

under the New York statute he may appoint municipal officers independently of the board of aldermen.[123]

§ 188. **The same subject continued—Miscellaneous powers.**—Under authority to preserve the public peace the mayor may resist the lawful police force when they are attempting to commit an unlawful act, and may call to his aid a rival body of police.[124] Where both by charter and ordinance the mayor is vested with certain executive power, it is not abridged by an ordinance confiding authority in the particular case to another official also;[125] and if the law requires that a certain fact "be made to appear to" the mayor as a condition precedent to action by him, his judgment is conclusive and protects him from civil liability.[126] In Louisiana the supreme court sustained a suit by the mayor in his official capacity to restrain a contemplated violation of the charter by other municipal officers. "We can not

dermen and common councilmen, and by ch. 40, § 2, all provisions of the statutes relating to selectmen and town clerks of towns are construed to apply to mayors, aldermen and city clerks of cities; and, the former being authorized by statute to administer oaths to all town officers, the mayor of a city has that authority in relation to city officers: Drew v. Morrill, 62 N. H. 23.

[123] The laws of New York of 1884, ch. 43, § 1, entitled "An act to center responsibility in the municipal government of the city of New York," which provides that all the appointments to office in the city of New York previously made by the mayor, and confirmed by the board of aldermen, shall thereafter be made by the mayor without such confirmation, applies to excise commissioners in New York, the power to appoint whom was previously vested in the mayor, subject to confirmation by the aldermen, although they may be, in a technical sense, state officers: People v. Andrews, 104 N. Y. 570; s. c. 12 N E. 274. The charter of the city of Minneapolis (Sp. L. of Minn. 1881. ch. 76, subch. 4, § 5, subd. 11) authorized the city council by ordinances "to erect lamps, and to provide for lighting of the city," and "to create, alter and extend lamp districts." And it was held that the power so conferred requires the exercise of judgment and discretion, and can not be delegated to a committee of the council, so that the determination of the committee will be final, either as to establishing new lamps or discontinuing those already established: Minneapolis Gas-Light Co. v. City of Minneapolis, 36 Minn. 159; s. c. 30 N. W. 450. See further, as to delegation of powers, the chapter on Public Boards, post.

[124] Slater v. Wood, 9 Bosw. (N. Y.) 15.

[125] Pedrick v. Bailey, 12 Gray (Mass.) 161. A city can not by ordinance confer a greater power upon its mayor than that given by charter: Union Depot & R. Co. v. Smith, 16 Colo. 361; s. c. 27 Pac. 329.

[126] Ela v. Smith, 5 Gray (Mass.) 121. He may order the abatement of a public nuisance: Henderson v. Mayor, 3 La. 563; and notice to him of a nuisance on city property is notice to the city: Nichols v. Boston, 98 Mass. 39.

prescribe to him," said the court, "the course which he is to pursue in the discharge of his official duties. The power to see the charter faithfully executed being given to him, the selection of the means necessary to its exercise is left to his discretion, and we can not interfere with them if they violate no law."[127] Authority conferred upon the mayor to punish summarily infractions of police regulations is not an encroachment upon the judicial power vested elsewhere by the constitution.[128]

§ 189. **Miscellaneous instances of powers of municipal officers.**— At the common law, in addition to suits by individuals and corpora-

[127] Genois v. Lockett, 13 La. 545, which is questionable law, according to Judge Dillon: Dillon Munic. Corp. (4th ed.), § 208. That public officers need not be expressly authorized to bring suit, but that their capacity to sue is commensurate with their public trusts and duties, see Auditor-General v. Lake George &c. R. Co., 82 Mich. 426, 429; s. c. 46 N. W. 730; citing Supervisor v. Stimson, 4 Hill (N. Y.) 136; Overseers v. Overseers, 18 Johns. (N. Y.) 407; Todd v. Birdsall, 1 Cow. (N. Y.) 260; Berrien Co. Treasurer v. Bunbury, 45 Mich. 79; s. c. 7 N. W. 704. The execution of an appeal bond by a mayor on behalf of a city is not incidental to the power to prosecute appeals, and therefore does not bind the city: Mayor &c. v. Railroad Co., 21 Md. 50.

[128] Shafer v. Mumma, 17 Md. 331. Cf. Waldo v. Wallace, 12 Ind. 569; Howard v. Shoemaker, 35 Ind. 111; Morrison v. McDonald, 21 Maine 550; Prell v. McDonald, 7 Kan. 426. Where the city council exceeds its power by the appropriation of money to pay the salary of an officer having no legal existence, the mayor may refuse to sign treasury warrants for his services while acting as such officer: Ward v. Cook, 78 Ill. App. 111. Where a license is required to be granted and signed by the mayor he has no discretion in the matter: In re O'Rourke, 30 N. Y. S. 375; s. c. 62 N. Y. St. 74. Where the mayor is in the city, but absent from a meeting, the power of the council is to choose a temporary chairman, only to preside, who has not the power of a mayor: People v. Blair, 82 Ill. App. 570. Where a city is divided into districts and resident physicians appointed in each under a provision of the charter which requires the physicians so appointed to be residents of the district in which they are appointed, the mayor has no right to assign such physicians to other districts: People v. Leavy, 59 N. Y. S. 408; s. c. 28 Misc. (N. Y.) 246. The mayor can not grant the exclusive right to sell intoxicating liquors within the corporate limits: Fletcher v. Collins, 111 Ga. 253; s. c. 36 S. E. 646. Where electric light has been furnished the city and the city council has audited the claims and ordered warrants therefor, it is the duty of the mayor to sign the orders, although the contract may have been invalid: Frederick v. People, 83 Ill. App. 89. The mayor may decide a tie vote of the council: Smedley v. Kirby, 120 Mich. 253; s. c. 79 N. W. 187; but is not counted in determining a quorum: People v. Brush, 31 N. Y. S. 586; s. c. 83 Hun (N. Y.) 613. A city attorney has no right to bind a city by an agreement that certain suits shall abide the result of other suits: Fidelity Trust &c. Co. v. City of Louisville, 174 U. S. 429; s. c. 19 S. Ct. 875.

tions, there are some collective bodies, which, although not strictly corporations, have been invested by law with certain corporate powers, and may sue in respect to the matters specially committed to their charge; and in general, all public officers, although not expressly authorized by statute, have a capacity to sue commensurate with their public trusts and duties.[129] A town treasurer has no power to convey real estate in behalf of the town, unless expressly authorized by vote, and a note given in payment of such unauthorized deed is without consideration and void.[130] Councilmen of a town appointed by its charter, who enter upon and perform the duties of their office, are de facto officers, and, though the charter be unconstitutional, their acts in levying a license tax, as authorized by it, are binding.[131]

[129] Supervisor v. Stimson, 4 Hill (N. Y.) 136; Overseers &c. v. Overseers &c., 15 Johns. (N. Y.) 436; Todd v. Birdsall, 1 Cow. (N. Y.) 260, and cases cited in note. See also, Palmer v. Vandenbergh, 3 Wend. (N. Y.) 193; Silver v. Cummings, 7 Wend. (N. Y.) 181; Avery v. Slack, 19 Wend. (N. Y.) 50; Dillon Munic. Corp. (4th ed.), § 237.

[130] Inhabitants &c. v. Tripp, 81 Maine 24; s. c. 16 Atl. 327. Town selectmen have no right to inquire into the legality of the vote of a school district to raise money; they have only to assess the tax voted, and may be compelled to do so by mandamus: School District v. Carr, 63 N. H. 201. The laws of New York of 1886, ch. 335, annexing the town of New Lots to the city of Brooklyn, authorized the mayor and other officers of the city to purchase the property and franchises of a water company incorporated in the town, at such price as might be agreed upon by such officers and the company, and, if they should be unable to agree upon a price, power to acquire the property and franchises by right of eminent domain was given the city "within two years hereafter." No agreement was made for the purchase of the property, and no proceedings were taken to acquire title to it within two years after the passage of the act. But it was held that the power of the officers named to buy expired with the two years to which the right to take by eminent domain was limited: Ziegler v. Chapin, 13 N. Y. S. 783; s. c. 126 N. Y. 342; 27 N. E. 471.

[131] Roche v. Jones, 87 Va. 484; s. c. 12 S. E. 965. The board of estimate and apportionment of New York City have no power to transfer money to pay clerks employed by the commissioners of accounts, the appropriation for their payment having been stricken off from the provisional estimate: Bird v. Mayor &c., 33 Hun (N. Y.) 396. Where a county physician refuses to treat a person in urgent need of medical attendance, a township trustee has authority to employ another, and his declarations concerning payment are competent: Washburn v. Board &c., 104 Ind. 321; s. c. 3 N. E. 757; 54 Am. R. 332. A department of the city government which has permitted another department to use buildings can not resume possession of them against the will of the department occupying them: New York Health Department v. Van Cott, 51 N. Y. Super. 413. Where a party, before

§ 190. De facto officers—General statement.—The leading modern case wherein de facto officers are defined and the general rules relating to their acts succinctly stated and supported by a vast array of authorities, in an opinion of great intrinsic weight, is State v. Carroll,[132] decided by the supreme court of errors of Connecticut. Chief Justice Butler summarizes the law as follows: An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised: First, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people without inquiry to submit to or invoke his action, supposing him to be the officer he assumed to be. Second, under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent requirement or condition; as, to take an oath, give a bond, or the like. Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or

the expiration of the time for an appeal from a judgment in favor of a municipal corporation, proposes to compromise with the council by paying one-half of such judgment and costs, such council does not exceed its powers by settling with such party in the manner proposed: Agnew v. Brall, 124 Ill. 312; s. c. 16 N. E. 230. The laws of New Jersey of 1888, p. 366, provide that "the board of aldermen, common council, . . . township committee, . . . or other board, body or department of any municipal corporation in this state having the charge or control of the water supply of such municipal corporation," may make a contract for obtaining or furnishing a supply of water for extinguishing fires and other proper purposes; and that "any such contract and agreement, when so made, shall be a valid and lawful contract of such municipal corporation." And it was held that under this act the township committee may make a contract with a water company for a supply of water, and order the levy of a tax to pay therefor: State v. Inhabitants &c., 52 N. J. L. 483; s. c. 19 Atl. 966. Duties of tax commissioners under charter of Greater New York not limited to the boroughs from which they are selected: People v. Feitner, 156 N. Y. 694; s. c. 51 N. E. 1093. Construction of New Orleans charter in relation to municipal officers and vacancies: State v. City of New Orleans, 51 La. An. 99; s. c. 24 So. 620. What constitutes a confidential relation under New York laws of 1898, ch. 184: People v. Scannell, 56 N. Y. S. 117. Construction of statute of Maryland in relation to visitors to jail: Field v. Malsten, 88 Md. 691; s. c. 41 Atl. 1087. Construction of California act of March 7, 1881, p. 54, in relation to supervisors and malfeasance in office: Fitch v. Board &c., 122 Cal. 285; s. c. 54 Pac. 901. Construction of New York laws of 1897, ch. 414, 368: People v. Newbrand, 60 N. Y. S. 588.

[132] 38 Conn. 449; s. c. 9 Am. R. 409.

irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. Fourth, under color of an election or appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such.[133] A de facto officer is one whose title is not good in law, but who is in fact in the unobstructed possession of an office and discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of an intruder or usurper.[134] Whether one was or was not a de facto officer at the time when he assumed to perform duties belonging to a public office is a mixed question of law and fact.[135] Where there is no ordinance providing for the election or appointment of a city marshal, as required by statute, a person claiming to act as such is neither an officer de jure nor de facto;[136] there can neither be a de jure or de facto officer where there is no office to fill.[137]

§ 191. **The same subject continued—Color of title.**—It was formerly deemed essential to the validity of the acts of an officer de facto that he should be in possession under color of title by an election or appointment;[138] but although that rule is still maintained by some of the authorities,[139] the later tendency is toward more liberal

[133] State v. Carroll, 38 Conn. 449; s. c. 9 Am. R. 409, sustaining a conviction for crime in a court presided over by a de facto judge. The acts done must be such as an officer de jure might lawfully do: Shelby v. Alcorn, 36 Miss. 273; s. c. 72 Am. D. 169. See also, generally, on the subject of de facto officers, Throop Public Officers, ch. 27, and Mechem Public Offices and Officers, ch. 8.

[134] Waite v. City of Santa Cruz, 89 Fed. 619, 627; Petersilea v. Stone, 119 Mass. 465; Johns v. People, 25 Mich. 499; Attorney-General v. Crocker, 138 Mass. 214; Hamlin v. Kassafer, 15 Or. 456; s. c. 15 Pac. 778; State v. Williams, 5 Wis. 308; Magneau v. City of Fremont, 30 Neb. 843; s. c. 47 N. W. 280.

[135] Waite v. City of Santa Cruz, 89 Fed. 619, 627; State v. Taylor, 108 N. C. 196; s. c. 12 S. E. 1005; United States v. Alexander, 46 Fed. 728.

[136] Ward v. Cook, 78 Ill. App. 111; Norton v. Shelby Co., 118 U. S. 425; s. c. 6 S. Ct. 1121.

[137] Ward v. Cook, 78 Ill. App. 111; Norton v. Shelby Co., 118 U. S. 425; s. c. 6 S. Ct. 1121.

[138] Rex v. Lisle, 2 Str. 1090; s. c. Andr. 163.

[139] Cocke v. Halsey, 16 Pet. 71; Fitchburg R. Co. v. Grand Junction &c. R. Co., 1 Allen (Mass.) 552; Brown v. Lunt, 37 Maine 423; Hooper v. Goodwin, 48 Maine 79; Carleton v. People, 10 Mich. 250; Douglass v. Wickwire, 19 Conn. 489; State v. Brennan's Liquors, 25 Conn. 278; Town of Plymouth v. Painter, 17 Conn. 585; Elliott v. Willis, 1 Allen (Mass.) 461; People v. Albertson, 8 How. Pr. (N. Y.) 363; People v. Collins, 7 Johns. (N. Y.) 549; McInstry v. Tanner, 9 Johns. (N. Y.) 135; Rochester &c. R. Co. v. Clarke Nat'l Bank, 60 Barb. (N. Y.) 234; Wilcox v. Smith, 5 Wend. (N. Y.) 231; Commissioners v. McDaniel, 7

views in favor of the public. "Third persons, from the nature of the case, can not always investigate the right of one assuming to hold an important office, even so far as to see that he has color of title to it by virtue of some appointment or election. If they see him publicly exercising its authority, if they ascertain that this is generally acquiesced in, they are entitled to treat him as such officer, and, if they employ him as such, should not be subjected to the danger of having his acts collaterally called in question."[140] While the acts of a mere usurper or intruder without color of right are utterly void,[141] such a person may, by public acquiescence, gain sufficient color of authority to support him as an officer de facto.[142]

§ 192. **Incumbent of an unconstitutional office.**—It is no impeachment of the acts of an officer who is otherwise de facto that his appointment or election is unconstitutional; as, for instance, where he is appointed in violation of a constitution providing for his election.[143] But where no office legally exists, there can be no de facto officer. This qualification of the rule was declared in an elaborate opinion by Mr. Justice Field of the supreme court of the United States, and an unconstitutional act creating an office "is, in legal contemplation, as inoperative as though it had never been passed."[144]

Jones L. (N. C.) 107; McGargell v. Hazleton Coal Co., 4 W. & S. (Pa.) 424; Gregg Tp. v. Jamison, 55 Pa. St. 468; Aulanier v. Governor, 1 Tex. 653.

[140] Per Devens, J., in Petersilea v. Stone, 119 Mass. 465, 467. See also, People v. Staton, 73 N. C. 546; State v. Carroll, 38 Conn. 449; s. c. 9 Am. R. 409; People v. Peabody, 6 Abb. Pr. (N. Y.) 228, 233; s. c. 15 How. Pr. (N. Y.) 470; Throop Public Agents, § 624; "Who is a de facto Officer?" 11 L. R. A. 105.

[141] State v. Taylor, 108 N. C. 196; s. c. 12 S. E. 1005; 12 L. R. A. 202; McCraw v. Williams, 33 Gratt. (Va.) 510; Hooper v. Goodwin, 48 Maine 79, 80; Tucker v. Aiken, 7 N. H. 113; Hamlin v. Kassafer, 15 Or. 456; s. c. 15 Pac. 778; 3 Am. St. 176.

[142] State v. Carroll, 38 Conn. 449; s. c. 9 Am. R. 409; Mechem Public Offices and Officers, §§ 319, 321.

[143] Chicago &c. R. Co. v. Langlade Co., 56 Wis. 614; s. c. 44 N. W. 844. See also, Leach v. People, 122 Ill. 420; s. c. 12 N. E. 726; Meagher v. Storey Co., 5 Nev. 244; Lambert v. People, 76 N. Y. 220; State v. Bloom, 17 Wis. 521; Cole v. Black River Falls, 57 Wis. 110; s. c. 14 N. W. 906; Ex parte Strang, 21 Ohio St. 610; State v. Carroll, 38 Conn. 449; s. c. 9 Am. R. 409.

[144] Norton v. Shelby Co., 118 U. S. 425, 442; s. c. 6 S. Ct. 1121. Mr. Justice Field says that the last paragraph of Chief Justice Butler's definition (§ 190, ante) "refers not to the unconstitutionality of the act creating the office, but to the unconstitutionality of the act by which the officer is appointed." See also, Ex parte Reilly, 85 Cal. 632; s. c. 24 Pac. 807; People v. Toal, 85 Cal. 333; s. c. 24 Pac. 603; "Acts of de facto Councils" in chapter on Public Boards, post. Cf. Donough v. Dewey, 82 Mich. 309; s. c. 46 N. W. 782, where it was held that if a law providing for two school inspectors was

And the same rule is applied where an office is abolished by statute: thenceforth there can be no de facto incumbent.[145] An officer elected under an unconstitutional law, where the interests of the public or a third party are concerned, is an officer de facto.[146]

§ 193. Possession of office by de facto officer.—In order to confer validity on the acts of a de facto officer he must be in possession and control of the office. There can not be a joint occupancy by two persons of a single office;[147] and if both are assuming to act officially, the one who is destitute of legal title can perform no valid act.[148] Where each of two rival claimants held possession for three days, the court decided that neither could sustain the character of an officer de facto.[149]

§ 194. Rights and liabilities of de facto officers.—An officer de facto can neither maintain nor defend suits in his official capacity for his own benefit. When he sets up a title by virtue of his office he must show an unquestionable right.[150] An infant is not justified in serving

unconstitutional because only one was authorized, the acts of both incumbents would be valid until the law should be declared unconstitutional.

[145] Long v. Mayor &c., 81 N. Y. 425; Ex parte Snyder, 64 Mo. 58; Conway v. St. Louis, 9 Mo. App. 488; In re Hinkle, 31 Kan. 712; s. c. 3 Pac. 531; Yorty v. Paine, 62 Wis. 154; s. c. 22 N. W. 137; Burt v. Winona &c. R. Co., 31 Minn. 472; s. c. 18 N. W. 285, 289; Leach v. People, 122 Ill. 420; s. c. 12 N. E. 726. But cf. State v. Farrier, 47 N. J. L. 383.

[146] State v. Carroll, 38 Conn. 449; Taylor v. Skrine, 3 Brev. (S. C.) 516; Cocke v. Halsey, 16 Peters 71; People v. White, 24 Wend. (N. Y.) 520; Carleton v. People, 10 Mich. 250; Clark v. Commonwealth, 29 Pa. St. 129; Commonwealth v. McCombs, 56 Pa. St. 436. The signing and delivery of bonds of officers de facto are, as to third persons, as valid as if they were officers de jure: Waite v. City of Santa Cruz, 89 Fed. 619.

[147] Boardman v. Halliday, 10 Paige (N. Y.) 223, 232. See also, Throop Public Officers, § 641; Mechem Public Offices and Officers, §§ 322, 323; Morgan v. Quackenbush, 22 Barb. (N. Y.) 72, 80; Hamlin v. Kassafer, 15 Or. 456; s. c. 15 Pac. 778; 3 Am. St. 176.

[148] State v. Blossom, 19 Nev. 312; s. c. 10 Pac. 430; Auditors v. Benoit, 20 Mich. 176; Cronin v. Stoddard, 97 N. Y. 271.

[149] Conover v. Devlin, 15 How. Pr. (N. Y.) 470. See also, Braidy v. Theritt, 17 Kan. 468; Runion v. Latimer, 6 S. C. 126; Ex parte Norris, 8 S. C. 408; Ex parte Smith, 8 S. C. 495.

[150] Adams v. Tator, 42 Hun (N. Y.) 384; Dolan v. Mayor &c., 68 N. Y. 274; Venable v. Curd, 2 Head (Tenn.) 582; Shepherd v. Staten, 5 Heisk. (Tenn.) 79; Riddle v. Bedford Co., 7 S. & R. (Pa.) 386; People v. Nostrand, 46 N. Y. 375; Dillon v. Myers, Bright. (Pa.) 426; Fowler v. Bebee, 9 Mass. 231; Hamlin v. Dingman, 5 Lans. (N. Y.) 61; Kimball v. Alcorn, 45 Miss. 151; People v. White, 24 Wend. (N. Y.) 520; Patterson v. Miller, 2 Met. (Ky.) 493; People v. Hopson, 1 Denio (N. Y.) 574; People v. Weber, 86 Ill. 283;

process as a constable.[151] Actual incumbency, merely, gives a public officer no right to recover salary or fees either by suit against the municipality or against private persons;[152] nor can be bring a suit in his official title for pecuniary penalties.[153]

§ 195. Resignation by acceptance of incompatible office.—Where a person holds an office which he is at liberty to relinquish at his own pleasure, the acceptance of another and incompatible office vacates the first office,[154] and it requires no legal proceedings to effect this result.[155] If a person be elected simultaneously to two incompatible offices, by qualifying for either he signifies his refusal of the other.[156] But where the officer is holding over by law until his successor is chosen, it seems that he may continue the exercise of the first without prejudice to the second;[157] and where the acceptance of the last

s. c. 89 Ill. 347; Nichols v. MacLean, 101 N. Y. 526; s. c. 5 N. E. 347; Miller v. Callaway, 32 Ark. 666; Olmsted v. Dennis, 77 N. Y. 378; Keyser v. McKissan, 2 Rawle (Pa.) 139. But he will be protected in public expenditures for lawful purposes: McCracken v. Soucy, 29 Ill. App. 619.

[151] Green v. Burke, 23 Wend. (N. Y.) 490. See also, Short v. Symmes, 150 Mass. 298; s. c. 23 N. E. 42; Colburn v. Ellis, 5 Mass. 427; Cummings v. Clark, 15 Vt. 653; Courser v. Powers, 34 Vt. 517; Johnston v. Wilson, 2 N. H. 202; Pearce v. Hawkins, 2 Swan (Tenn.) 87; People v. Weber, 86 Ill. 283; s. c. 89 Ill. 347; Miller v. Callaway, 32 Ark. 666; Patterson v. Miller, 2 Met. (Ky.) 493; Rodman v. Harcourt, 4 B. Mon. (Ky.) 224.

[152] Dolan v. Mayor, 68 N. Y. 274; s. c. 23 Am. R. 168; People v. Hopson, 1 Denio (N. Y.) 574; Mayfield v. Moore, 53 Ill. 428; McCue v. Wapello Co., 56 Iowa 698; s. c. 10 N. W. 248; Prescott v. Hayes, 42 N. H. 56; Riddle v. Bedford Co., 7 S. & R. (Pa.) 386; City of Philadelphia v. Given, 60 Pa. St. 136; Dolliver v. Parks, 136 Mass. 499. He can not recover, for instance, if he omitted to take the oath required by statute: Thomas v. Owens, 4 Md. 189; City of Philadelphia v. Given, 60 Pa. St. 136.

[153] Gould v. Glass, 19 Barb. (N. Y.) 179; Supervisor v. Stimson, 4 Hill (N. Y.) 136; Horton v. Parsons, 37 Hun (N. Y.) 42; People v. Nostrand, 46 N. Y. 375.

[154] People v. Nostrand, 46 N. Y. 375; People v. Carrique, 2 Hill (N. Y.) 93; Magie v. Stoddard, 25 Conn. 565; State Bank v. Curran, 10 Ark. 142; Pooler v. Reed, 73 Maine 129; Stubbs v. Lee, 64 Maine 195; State v. Goff, 15 R. I. 505; s. c. 9 Atl. 226; People v. Hanifan, 96 Ill. 420; Foltz v. Kerlin, 105 Ind. 221; s. c. 4 N. E. 439; 5 N. E. 672; State v. West, 33 La. An. 1261; Kenney v. Goergen, 36 Minn. 190; s. c. 31 N. W. 210; State v. Brinkerhoff, 66 Tex. 45; s. c. 17 S. W. 109.

[155] State v. Buttz, 9 S. C. 156, and cases cited in the preceding note.

[156] Cotton v. Phillips, 56 N. H. 220. Formerly, in England, in the case of incompatible offices, the incumbent was held to retain the superior, but such is not now the rule: Rex v. Jones, 1 B. & Ad. 677; Milward v. Thatcher, 2 T. R. 81; Rex v. Tizzard, 9 B. & C. 418; Com. Dig., tit. Officer, K. 5.

[157] State v. Somers, 96 N. C. 467; s. c. 2 S. E. 161.

office is made compulsory, under a penalty,[158] or in case of ineligibility to occupy the same,[159] there is no implied abandonment of the first office. "Where one office is not subordinate to the other," said the court of common pleas of New York, "nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter is that from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other."[160]

§ 196. **Acceptance and withdrawal of resignation.**—At common law it was an indictable offense for one to refuse an office in a public corporation to which he had been duly elected.[161] This principle has been applied by the English and several American authorities so as to render a resignation of such an officer after entering upon his office[162] wholly ineffective without the express or implied assent of the appointing power.[163] But the rule is not settled: many authorities holding that the office becomes ipso facto vacant when a resignation is transmitted and received.[164] Where such is the law, a resignation is as irrevocable as an appointment, and if it be unconditional

[158] Goettman v. Mayor &c., 6 Hun (N. Y.) 132. Cf. Hartford Tp. v. Bennett, 10 Ohio St. 441.

[159] State v. Kearns, 47 Ohio St. 566; s. c. 25 N. E. 1027.

[160] People v. Green, 5 Daly (N. Y.) 254; s. c. 46 How. Pr. (N. Y.) 168. See also, for a collection of English and American rulings on incompatibility, Throop Public Officers, § 35 et seq.

[161] State v. Ferguson, 31 N. J. L. 107; Com. Dig., tit. Officer, B. 1. See also, Edwards v. United States, 13 Otto 471; Dillon Munic. Corp. (4th ed.), § 223.

[162] There can be no resignation by one who has not qualified: Miller v. Supervisors, 25 Cal. 93; Reg. v. Blizard, L. R. 2 Q. B. 55. See also, In re Corliss, 11 R. I. 638.

[163] Reg. v. Lane, 2 Ld. Raym. 1304; Edwards v. United States, 13 Otto 471. Cf. United States v. Wright, 1 McLean 509; Van Orsdall v. Hazard, 3 Hill (N. Y.) 243 (where Cowen, J., said it is entirely clear that the resignation may be either in writing or by parol, express, or even by implication, so that there be an intent to resign on one side and an acceptance on the other); State v. Ferguson, 31 N. J. L. 107; Hoke v. Henderson, 4 Dev. (N. C.) 1, 29; State v. Clayton, 27 Kan. 442; Rogers v. Slonaker, 32 Kan. 191; s. c. 4 Pac. 138; City of Waycross v. Youmans, 85 Ga. 708; s. c. 11 S. E. 865; State v. Boecker, 56 Mo. 17.

[164] Olmsted v. Dennis, 77 N. Y. 378; citing Gilbert v. Luce, 11 Barb. (N. Y.) 91; People v. Porter, 6 Cal. 26; State v. Hauss, 43 Ind. 105; Leech v. State, 78 Ind. 570; Gates v. Delaware Co., 12 Iowa 405; State v. Clarke, 3 Nev. 566; Conner v. Mayor, 2 Sandf. (N. Y.) 355; s. c. 5 N. Y. 285, 295.

it can not be withdrawn.[165] But a prospective resignation may be withdrawn with the consent of the authority accepting where no new rights have intervened.[166]

§ 197. **Removal of officers and agents—How effected.**—The power of a corporation to remove its officers depends greatly upon the tenure of office of such officers; as, where the power of removal is discretionary, they may be removed without notice or hearing; but if their term of office is during good behavior, or where the removal can only be for for certain causes, they can not be removed except after notice and hearing.[167] The power to remove is incidental to a corporation at large, and unless delegated to a select body or part, it must be exercised by the whole corporation.[168] In the absence of a constitu-

[165] State v. Fitts, 49 Ala. 402; Gates v. Delaware Co., 12 Iowa 405; Bunting v. Willis, 27 Gratt. (Va.) 144; State v. Hauss, 43 Ind. 105; Pace v. People, 50 Ill. 432.

[166] Biddle v. Willard, 10 Ind. 62, 66; State v. Clayton, 27 Kan. 442; s. c. 41 Am. R. 418. See also, Throop Public Officers, ch. 17.

[167] People v. New York, 82 N. Y. 491; Queen v. Governors &c., 8 Ad. & El. 632; Rex v. Oxford, 2 Salk. 428; Bagg's Case, 11 Coke 93 (b); In re Ramshay, 83 Eng. Com. Law 174, 189; Rex v. Coventry, 1 Ld. Raym. 391; Rex v. Mayor &c., 1 Lev. 291; Dr. Gaskin's Case, 8 T. R. 209; Willcock Munic. Corp. 253, 254; 2 Kyd Corp. 58, 59; Rex v. Andover, 1 Ld. Raym. 710; Field v. Commonwealth, 32 Pa. St. 478; In re Hennen, 13 Peters 230. For removal, where duration of term is not fixed, see People v. Comptroller &c., 20 Wend. (N. Y.) 595; People v. Nichols, 79 N. Y. 582; Field v. Girard College, 54 Pa. St. 233; Commonwealth v. Sutherland, 3 S. & R. (Pa.) 145; State v. City of St. Louis, 90 Mo. 19; s. c. 1 S. W. 757; State v. Doherty, 25 La. An. 119; s. c. 13 Am. R. 131; Page v. Hardin, 8 B. Mon. (Ky.) 648; City of Madison v. Korbly, 32 Ind. 74; Stadler v. Detroit, 13 Mich. 346. The New York statutes of 1887 and 1888 provided that conductors on the Brooklyn bridge, who were soldiers in the war of the rebellion, and honorably discharged, must be notified of all charges against them before being removed from their positions. It was held, on mandamus to reinstate such a soldier, who had been removed from such position as conductor without a hearing, that, as he was entitled to a hearing without regard to the merits of his case, an order for a bill of particulars was unnecessary, and should be reversed: People v. Howell, 13 N. Y. S. 217; s. c. 37 N. Y. St. 181. The charter of the city of Jacksonville provided that no officer could be removed by the city council without first being heard in his defense. It was decided that the hearing must be had before the city council itself, and not before one of its committees: City of Jacksonville v. Allen, 25 Ill. App. 54. A board of police commissioners is not guilty of an arbitrary and unwarrantable exercise of authority in suspending an officer pending a trial before the board on charges which, if true, would involve his dismissal: State v. St. Louis Police Comm., 16 Mo. App. 48.

[168] State v. Common Council &c., 25 N. J. L. 536; Fane's Case, 1 Doug.

tional restriction a statute may shorten the term of an office before the expiration of the time for which a person has been elected.[169] And so the term of office may be shortened by an amendment to the charter abolishing the office, and placing the duties upon other officers.[170] The notion that an appointment for a term, under an ordinance providing that the officer shall be removable for cause, without more, is a contract that the office shall be kept up for the term irrespective of the public welfare, can not be sustained.[171] A board of public works established under the discretionary power conferred by statute may be abolished at any time.[172] But the abolishing of an office is a matter about which courts will examine as to the good faith of the action.[173] While the power which creates an office can abolish it at pleasure, yet where an officer is appointed to hold during good behavior and an ordinance is passed abolishing the office, but before it takes effect a new ordinance is passed reviving the office and another person is appointed to the office, the first incumbent will hold.[174]

149, 153; Lord Bruce's Case, 2 Str. 819; Rex v. Richardson, 1 Burr. 517; Rex v. Taylor, 3 Salk. 231; Rex v. Lyme Regis, 1 Doug. 149, 153; 2 Kyd Corp. 56; Grant Corp. 240, 241; Glover Corp. 329. Where the preferring of charges and an opportunity to be heard are required by law, summary action is void: Pratt v. Board &c., 15 Utah 1; s. c. 49 Pac. 747. The N. Y. act of 1898, ch. 186, § 3, prohibiting removals from office without an opportunity for defense applies to the city of New York: People v. Dalton, 53 N. Y. S. 291. On investigation of the police commissioners against a policeman he has no right to complain that his witnesses were not sworn where their testimony is received and given the same consideration as if sworn: People v. Moss, 56 N. Y. S. 1032; s. c. 38 App. Div. (N. Y.) 630. Under New Jersey act of 1897, the council can not declare an office vacant without a hearing on notice if practicable, and proof of facts legally authorizing such action: Krueger v. Council &c., 64 N. J. L. 523; s. c. 45 Atl. 780. An inspector of water supply held not to be a clerk and entitled to a hearing, although he may perform some clerical duties: People v. Dalton, 159 N. Y. 235; s. c. 53 N. E. 1113.

[169] Collins v. Russell, 107 Ga. 423; s. c. 33 S. E. 444.

[170] Donaghy v. Macy, 167 Mass. 178; s. c. 43 N. E. 87; People v. Davie, 114 Cal. 363; s. c. 46 Pac. 150.

[171] Butcher v. City of Camden, 29 N. J. Eq. 478; Love v. Mayor &c., 46 N. J. L. 456; Mayor &c. v. Gear, 27 N. J. L. 265; City Council v. Sweeney, 44 Ga. 463; Waldraven v. Mayor &c., 4 Coldw. (Tenn.) 431; Marden v. Portsmouth, 59 N. H. 18; City of Brazil v. McBride, 69 Ind. 244, 256; Conner v. Mayor &c., 2 Sandf. (N. Y.) 355; City of Palestine v. West (Tex. Civ. App.), 37 S. W. 783.

[172] Board &c. v. Brawner, 100 Ky. 166; s. c. 37 S. W. 950; 38 S. W. 497.

[173] People v. La Grange, 40 N. Y. S. 1026; s. c. 7 App. Div. (N. Y.) 311.

[174] Silvey v. Boyle, 20 Utah 205; s. c. 57 Pac. 880. The fire commissioner may properly, on economic grounds, abolish a position held by

§ 198. Causes for removal—English and American rules.—It is said in Kyd on Corporations[175] that "the offenses for which a corporator may be disfranchised, or a corporate officer removed, have been distributed into three distinct classes: First, such as relate merely to his corporate or official character and amount to breaches of the condition tacitly or expressly annexed to his franchise or office.[176] Secondly, such as have no immediate relation to his corporate or official character, but are in themselves of so infamous a nature as to render the offender unfit to enjoy any public franchise; such as perjury, forgery, etc. And thirdly, offenses of a mixed nature, being not only against his corporate or official duty, but also indictable at common law."[177]

employes under him: People v. Scannell, 62 N. Y. S. 1064; s. c. 49 App. Div. (N. Y.) 244. The adoption by a city of the general law for the incorporation of cities abolishes eo instanti the office of city marshal: People v. Blair, 82 Ill. App. 570. An office of the state can not be abolished by the city: Marquis v. City of Santa Ana, 103 Cal. 661; s. c. 37 Pac. 650.

[175] 2 Kyd Corp. 62.

[176] Bagg's Case, 11 Coke 93, 98a.

[177] Rex v. Carlisle, Fortesc. 200; s. c. 11 Mod. 379. As to rescinding an invalid amotion, see Reg. v. Mayor &c., 28 L. T. (N. S.) 629. For amotion and disfranchisement, see 2 Kent Com. 278, 297; and Angell & Ames Corp., ch. 12 (where the doctrine of the English decisions is presented and earlier cases cited); Richards v. Clarksburg, 30 W. Va. 491; s. c. 4 S. E. 774. Disfranchisement destroys and takes away the franchise or right of being a member of a corporation: Willcock Munic. Corp. 245–276; Grant Corp. 250, 263; 2 Kyd Corp. 50–94; Glover Corp., ch. 16, pp. 327, 328. Under the code of West Virginia, which provides that "all the corporate powers of the corporation shall be exercised" by the common councils of towns or villages to which said chapter applies, the power of amotion of officers for misconduct, which at common law is vested in the "corporation at large," is conferred on such councils: Richards v. Clarksburg, 30 W. Va. 491; s. c. 4 S. E. 774. The revised statutes of Indiana confer express authority upon the common council of a city to expel or remove, by a two-thirds vote, any member thereof, or any officer of the corporation, whether elected or appointed, and require the council to make provision as to the mode in which charges shall be preferred and heard. Section 4265 Burns R. S. 1901 provides that the common council shall be authorized, through a committee, to investigate the books and papers, together with all matters pertaining to the management of the water-works, and, in case of neglect of duty or malfeasance on the part of any officer connected therewith, to remove the offender. And it was held that a court of equity has no jurisdiction to restrain the council of a city from proceeding to investigate charges preferred against trustees of the water-works in the mode provided by the by-laws and ordinances of the city: Muhler v. Hede-

§ **199. Preferring of charges.**—Sometimes the grounds for removal are stated in the constitution as misconduct and malfeasance in office,[178] but most usually they are specified in the statute,[179] but may be embodied in the charter.[180] The removal of an officer from his office being a judicial act,[181] it is necessary that formal charges be made in order that the officer charged may know the grounds of accusation and be prepared to meet them if he can.[182] The grounds

kin, 119 Ind. 481; s. c. 20 N. E. 700. Acts of an officer, after his suspension, in seeking and accepting other employment, are not admissible against him to show that he understood, when he received notice of suspension, that he was discharged: Morley v. Mayor &c., 12 N. Y. S. 609; s. c. 58 Hun (N. Y.) 610.

[178] Where the constitution provides that officers not subject to impeachment shall be subject to removal for misconduct and malfeasance in office in such manner as provided by law, and the statute is silent on the subject of causes for removal, the only grounds for removal are those specified in the constitution: Board &c. v. People, 13 Colo. App. 553; s. c. 59 Pac. 72.

[179] Where the law provides that a village officer shall not be interested in contracts with the village, and he admits the violation, he should be removed. It is not a defense that he received no more on the contract than other contractors and acted in good faith: In re Smith, 63 N. Y. S. 1018; s. c. 48 App. Div. (N. Y.) 634. A person in office when a law goes into effect prohibiting an officer becoming interested in a contract, who does not deny knowledge of the law, and knew of similar provisions in a previous law, does not show good faith: In re Smith, 63 N. Y. S. 1018; s. c. 48 App. Div. (N. Y.) 634.

[180] Where the charter authorizes the removal of officers for incapacity, or other just cause, an officer may be removed, notwithstanding there is no ordinance prescribing the mode of removal, if the action of the council is in proper form: State v. Smith, 72 Conn. 572; s. c. 45 Atl. 355.

[181] People v. Board &c., 39 N. Y. S. 607; s. c. 4 App. Div. (N. Y.) 399. A village trustee who prefers charges against an officer is not competent to sit as a member of the board on a hearing of the charges: People v. Board &c., 39 N. Y. S. 607; s. c. 4 App. Div. (N. Y.) 399. But see State v. Common Council &c., 90 Wis. 612; s. c. 64 N. W. 304.

[182] In stating a ground for removal the facts should be alleged to have been wilfully done: State v. Mayor &c., 10 Wash. 4; s. c. 38 Pac. 761. Where a charter provides that the mayor may remove for cause which he may deem sufficient, and the reason assigned was "the good of the service," it is sufficient as a matter of law: Ayers v. Hatch, 175 Mass. 489; s. c. 56 N. E. 612. In formal pleading this statement would be quite insufficient, as it is but a mere conclusion and conveys no information to the officer charged. Formal charges for removal by a municipal board are essential in Tennessee: Hayden v. City Council &c., 100 Tenn. 582; s. c. 47 S. W. 182. Where an officer goes to trial on charges not sufficiently specific he waives the question of sufficiency: State v. Kirkwood, 15 Wash. 298; s. c. 46 Pac. 331.

which have been held sufficient for the removal of an officer are many and can not be enumerated in detail.[183]

§ 200. **Power of corporation to remove officers and agents.**—One of the common-law incidents of all corporations is the power to remove a corporate officer from his office for just and reasonable cause.[184] The leading case on this subject is Rex v. Richard-

[183] An inspector of buildings who entered a saloon and committed an assault was held to be properly removed: People v. Brady, 62 N. Y. S. 603; s. c. 48 App. Div. (N. Y.) 128. Where a collector of city revenues was removed for incompetency, the removal will not be disturbed where such officer offered no explanation of his inability to balance his books and could not add correctly his collections: People v. Coler, 159 N. Y. 569; s. c. 54 N. E. 1094. Where a board of trustees is made exclusively the judge of the qualifications of its members, the refusal of the mayor to recognize certain members, the permitting of persons not members to sit and vote, the casting of a vote by the mayor when not authorized, are not grounds of removal, since the right of appeal from any ruling or decision exists: Board &c. v. People, 13 Colo. App. 553; s. c. 59 Pac. 72. Prosecution and conviction for misdemeanor in a court of competent jurisdiction is essential as a ground of removal: Board &c. v. People, 13 Colo. 553; s. c. 59 Pac. 72. It is misfeasance and malfeasance in a city attorney to stipulate not to appeal a case and report to the council that he had done nothing to prevent an appeal: People v. Common Council &c., 33 N. Y. S. 165; s. c. 85 Hun (N. Y.) 601. It is not malconduct for an officer to strike a person with a pistol and no cause for removal: Johnson v. City Council &c., 11 Tex. Civ. App. 469; s. c. 33 S. W. 150. Where the mayor solicited and collected from the heads of departments large sums of money to reimburse himself for campaign expenses it is ground for removal: State v. Common Council &c., 90 Wis. 612; s. c. 64 N. W. 304. Town officers having power to require an additional bond of an officer appointed to fill a vacancy have power to declare the office vacant upon the appointee refusing to give bond as required: Lyman v. Commonwealth (Ky.), 55 S. W. 686. Under a charge against a member of a municipal board of asking for a bribe he can not be removed for merely failing to disclose to the council that a bribe had been offered him: Hayden v. City Council &c., 100 Tenn. 582; s. c. 47 S. W. 182. The removal of a collector of city revenues will not be disturbed where he was unable to balance his books and could not add correctly his collections and made no explanation of his inability: People v. Coler, 57 N. Y. S. 636; s. c. 40 App. Div. (N. Y.) 65; s. c. aff'd 159 N. Y. 569; 54 N. E. 1094.

[184] Dillon Munic. Corp. (4th ed.), § 212; Richards v. Clarksburg, 30 W. Va. 491; s. c. 4 S. E. 774; State v. Judges, 35 La. An. 1075; Ellison v. Aldermen &c., 89 N. C. 125; Rex v. Richardson, 1 Burr. 517; Rex v. Mayor &c., 2 Burr. 738; Rex v. Mayor &c., 2 Burr. 723; Lord Bruce's Case, 2 Str. 819; Jay's Case, 1 Vent. 302; Rex v. Lyme Regis, 1 Doug. 149, 153; Rex v. Ponsonby, 1 Ves. Jr. 1; Rex v. Taylor, 3 Salk. 231; Rex v. Tidderley, 1 Sid. 14, per Hale, C. B.; 2 Kyd Corp. 50–94, where the old cases are digested; Rex v. Chalke, 1 Ld. Raym. 225; 1

son,[185] in which it was decided that a corporation, in the absence of an express grant of authority, had the incidental power to make a by-law to remove officers for just cause.[186] Where the charter of a municipal corporation gives to the common council express power to "expel a member for disorderly conduct," the right to expel depends upon the construction of the words "disorderly conduct."[187]

§ **201. The same subject continued.**—The revised statute of Missouri which revised the city charter of Sedalia provided that the mayor should have power, with the consent of the board of aldermen, to remove from office any person holding office, created by charter or ordinance, for cause. It was held that this statute was not repealed by a subsequent statute which provided for the removal from office of persons who failed to devote their time to their duties, or who were guilty of wilful or fraudulent violation of duty; and in an action for wrongful ouster from office, it was held not error to permit plaintiff to strike out an allegation as to the power of defendant mayor and aldermen to remove for cause the incumbent of an office created by charter or ordinance, as the state of facts on which the action was based remained unaltered.[188] Where a charter prohibits a sal-

Roll. Rep. 409; s. c. 3 Bulst. 189; Willcock Munic. Corp. 246; Grant Corp. 240; 2 Kent Com. 297.

[185] 1 Burr. 517.

[186] Dillon Munic. Corp. (4th ed.), § 251. The Massachusetts statutes of 1885 provide that subordinates of the various city boards of Boston may be removed by the board "for such cause as they may deem sufficient, and shall assign in their order for removal." The court decided that it does not require that a subordinate shall be given a hearing before the board, on charges preferred against him, before he can be removed: O'Dowd v. City of Boston. 149 Mass. 443; s. c. 21 N. E. 949. Charter power of removal, at any time, without cause, of a police patrol appointed for a year,—see City of Chicago v. Edwards, 58 Ill. 252.

[187] State v. Common Council &c., 25 N. J. L. 536. For power to punish for contempt in England, see Doyle v. Falconer, L. R. 1 P. C. 328; Speaker v. Glass, L. R. 3 P. C. 560. Power of courts in United States to punish for contempt: Burr's Trial, 355; Ex parte Kearney, 7 Wheat. 38; United States v. Hudson, 7 Cranch 32. Power of congress: 12 U. S. Stats. at Large 333; 11 U. S. Stats. at Large 155. See also, Kilbourn v. Thompson, 103 U. S. 168.

[188] Manker v. Faulhaber, 94 Mo. 430; s. c. 6 S. W. 372. The Missouri constitution of 1875 provided that all laws in force at the adoption of the constitution, and not inconsistent therewith, should remain in force until altered or repealed by the general assembly. It was accordingly decided in the case last cited that the act of March 18, 1873, as amended by an act of 1875, revising the charter of the city of Sedalia, and providing for the removal of city officers by the mayor and board of aldermen for cause, is not repugnant to said constitution of 1875, regarding the duties of persons holding offices of trust or profit,

aried officer from holding any other public office during his incumbency, the acceptance of a commission in the United States army operates as a forfeiture of the office notwithstanding a resolution of the council to the contrary.[189]

§ 202. **Notice of proceeding to remove.**—Before an officer whose tenure of office is not discretionary can be removed, he is entitled to a personal notice of the proceeding against him; which notice must contain the fact that a proceeding to amove is intended, and the time when and place where the trial body will meet.[190] The charges

and the power of the general assembly to provide for their removal for violation or neglect of official duty. Implied power of removal for cause by appointing power: Willard's Appeal, 4 R. I. 595, 597, per Ames, C. J. In an action for damages for wrongful removal from office by the mayor and aldermen of a city, the refusal by the court to permit defendants to read the provisions of the city charter giving them authority to remove for cause is erroneous: Manker v. Faulhaber, 94 Mo. 430; s. c. 6 S. W. 372. The consolidation act of New York provides that the heads of all the departments of New York City may be removed by the mayor, after opportunity to be heard. It was decided that the violation of the provision in the act that no head of the department shall become interested directly or indirectly in the purchase of real estate by the corporation constitutes sufficient cause for removal by the mayor, and it is immaterial that the act also contains a provision for the punishment of such offense: People v. Mayor &c., 5 N. Y. S. 538; s. c. 52 Hun (N. Y.) 483. Where judgment of ouster is pronounced against persons holding seats in a city council, and they are ousted therefrom on the ground that the wards from which they claim to have been elected had no legal existence, such ouster does not create vacancies in the council which may be filled by a special election: State v. Kearns, 47 Ohio St. 566; s. c. 25 N. E. 1027. Where the charter provided for the appointment of an officer at a specified meeting who should hold his office for one year and until his successor was appointed, a successor can not be appointed at a subsequent meeting: State v. Alexander, 107 Iowa 177; s. c. 77 N. W. 841. A statute providing for filling the vacancy in an entire board of trustees by the county court appointing a board does not conflict with an amendment authorizing the county judge to fill a vacancy in the board, and the latter does not repeal the former: Lewis v. Town of Brandenburg, 20 Ky. L. 1011; s. c. 47 S. W. 862; 48 S. W. 978.

[189] People v. Drake, 60 N. Y. S. 309; s. c. 43 App. Div. (N. Y.) 325; People v. Duane, 121 N. Y. 367; s. c. 24 N. E. 845; State v. Mayor &c., 63 N. J. L. 96; s. c. 42 Atl. 782; Kerr v. Jones, 19 Ind. 351; Rowland v. Mayor &c., 83 N. Y. 372; People v. Nostrand, 46 N. Y. 375; People v. Common Council &c., 77 N. Y. 503; State v. Allen, 21 Ind. 516.

[190] People v. Benevolent Society, 24 How. Pr. (N. Y.) 216; People v. Nichols, 79 N. Y. 582; In re Nichols, 6 Abb. N. C. (N. Y.) 474; s. c. 57 How. Pr. (N. Y.) 395; People v. Commissioners &c., 106 N. Y. 64; s. c. 12 N. E. 641; Commonwealth v. Pennsylvania Benef. Institute, 2 S. & R. (Pa.) 141; Society v. Vandyke, 2 Whart. (Pa.) 309; Delacey v.

must be specially stated with substantial certainty;[191] and the accused must be given time to produce his testimony and present his answer, and is entitled to be represented by counsel and to cross-examine the witnesses against him.[192]

§ **203. The same subject continued.**—When the charge is not admitted it must be examined and proved.[193] Before an officer can be ousted by authority other than the appointing power, he is entitled to a hearing, for the reason that the question whether he shall be ousted is a judicial one, and a decision given without affording him time and opportunity to be heard is ineffectual.[194] Where the charge stated does not justify the removal, or where the removal is erroneous, the officer is entitled to be restored by mandamus.[195]

Neuse &c. Co., 1 Hawks (N. C.) 274; Southern Plank R. Co. v. Hixon, 5 Ind. 165; Innes v. Wylie, 1 C. & K. 257; Queen v. Saddlers' Co., 10 H. L. Cas. 404; State v. Bryce, 7 Ohio (pt. 2, 82) 414, 416; Rex v. Richardson, 1 Burr. 517; Rex v. Liverpool, 2 Burr. 723; Rex v. Doncaster, 2 Burr. 738. See King v. Harris, 1 B. & Ad. 936; Exeter v. Glyde, 4 Mod. 33; Bagg's Case, 11 Coke 93a; Rex v. Wilton, 5 Mod. 257; Willcock Munic. Corp. 264, 265; Reg. v. Bailiffs &c., 2 Ld. Raym. 1240. When notice may be dispensed with,—see Dillon Munic. Corp. (4th ed.), § 254.

[191] Bagg's Case, 11 Co. 93a; s. c. 1 Roll. 224; Tompert v. Lithgow, 1 Bush (Ky.) 176; Willcock Munic. Corp. 267; Glover Corp. 334; Rex v. Lyme Regis, 1 Doug. 177.

[192] Murdock v. Academy, 12 Pick. (Mass.) 244; State v. Bryce, 7 Ohio (pt. 2, 82) 414; Rex v. Chalke, 1 Ld. Raym. 225; Rex v. Derby, Cas. temp. Hardw. 154; Rex v. Richardson, 1 Burr. 517; Rex v. Liverpool, 2 Burr. 723. Under § 95 of the charter of Greater New York it is not necessary to give notice to remove officials whose terms have expired: People v. Feitner, 51 N. Y. S. 1094; s. c. 30 App. Div. (N. Y.) 241; s. c. affirmed 156 N. Y. 694; 51 N. E. 1093. A removal is not effective until the person removed has been notified: Kriseler v. Le Valley, 122 Mich. 576; s. c. 81 N. W. 580. Notice by a village clerk of removal by the village president is not sufficient: Kriseler v. Le Valley, 122 Mich. 576; s. c. 81 N. W. 580.

[193] Murdock v. Academy, 12 Pick. (Mass.) 244; Willcock Munic. Corp. 267; Glover Corp. 334; Harman v. Tappenden, 1 East 555; Rex v. Faversham, 8 T. R. 352.

[194] Board &c. v. Johnson, 124 Ind. 145; s. c. 24 N. E. 148; 19 Am. St. 88; Dullam v. Willson, 53 Mich. 392; s. c. 19 N. W. 112; 51 Am. R. 128; People v. Freese, 83 Cal. 453; s. c. 23 Pac. 378; Williams v. Bagot, 3 B. & C. 772; Page v. Hardin, 8 B. Mon. (Ky.) 648. The power to oust an officer rightfully in office is essentially a judicial one, except where it is exercised by the appointing power: State v. Harrison, 113 Ind. 434; s. c. 16 N. E. 384; 3 Am. St. 663.

[195] State v. Jersey City, 25 N. J. L. 536; Commonwealth v. German Society, 15 Pa. St. 251; City of Madison v. Korbly, 32 Ind. 74; Reg. v. Ispwich, 2 Ld. Raym. 1232. Equity will not enjoin the corporate authorities from making an unlawful removal or appointing a successor: Dillon Munic. Corp. (4th ed.), ch. 21 and § 847; Delahanty v. Warner, 75 Ill. 185; s. c. 20 Am. R. 237. One

§ 204. By whom discharged.—(a) *By city council.*—As a rule an office created by the city council may be abolished by it in the absence of constitutional or statutory restrictions.[196] When the statute provides that the council shall appoint a certain officer to continue in office during its pleasure it is within the power of the council to remove such officer summarily at any time without notice or charges preferred.[197] If the right of removal is given by the charter to the council the right is not taken away by fixing the term of office by ordinance at one year.[198] And where the council is authorized from time to time to elect and appoint an officer he may be removed and his successor appointed at pleasure.[199] But where an officer is removable by the city council his removal by a committee of such council is not effective until ratified by the council: the power can not be delegated.[200] If the power of removal is in the council a member is not disqualified by reason of his having preferred charges against the officer.[201] But where the statute declares that an office may be

who has been duly elected, qualified and inducted into office as a city alderman can not be summarily removed, by resolution of the board, upon a charge of disqualification, without notice and without hearing or investigation of any kind: Board &c. v. Darrow, 13 Colo. 460; s. c. 22 Pac. 784. Where the sufficiency of an explanation rests entirely with the removal officer, after a full hearing his action will not be disturbed on appeal: People v. Brady, 62 N. Y. S. 603; s. c. 48 App. Div. (N. Y.) 128. As to the effect of the consolidation of New York with portion of Queens County in relation to policemen, see People v. York, 53 N. Y. S. 947; s. c. 33 App. Div. (N. Y.) 573. As to commissioner of city works, see People v. Dalton, 53 N. Y. S. 1060; s. c. 34 App. Div. (N. Y.) 6; In re Fuller, 53 N. Y. S. 1090; s. c. 33 App. Div. (N. Y.) 617. As to wages after consolidation, where no services were rendered thereafter, see Ford v. City of New York, 56 N. Y. S. 4; s. c. 26 Misc. (N. Y.) 292. In order to maintain a suit for his salary by a person who was illegally removed from his office it is not necessary to be reinstated by mandamus: Morgan v. City of Denver, 14 Colo. App. 147; s. c. 59 Pac. 619. A petition for reinstatement which does not state the nature of petitioner's duties, but merely alleges that he is a regular clerk so as to be entitled to a hearing, is not sufficient: People v. Dalton, 159 N. Y. 235; s. c. 53 N. E. 1113. Where a policeman is remanded to patrol duty and waits two years before beginning proceedings for restoration, he is guilty of laches and will not be heard: People v. Moss, 58 N. Y. S. 1051; s. c. 42 App. Div. (N. Y.) 196. Petition for reinstatement under N. Y. laws of 1898, ch. 186, must state that petitioner's position was classified as competitive: People v. Dalton, 159 N. Y. 235; s. c. 53 N. E. 1113.

[196] Goodwin v. State, 142 Ind. 117; s. c. 41 N. E. 359.

[197] Town of Davis v. Miller, 47 W. Va. 413; s. c. 35 S. E. 6.

[198] Mathis v. Rose, 64 N. J. L. 45; s. c. 44 Atl. 875.

[199] Mathis v. Rose, 64 N. J. L. 45; s. c. 44 Atl. 875.

[200] People v. Tracy, 54 N. Y. S. 1070; s. c. 35 App. Div. (N. Y.) 265.

[201] People v. Common Council &c.,

declared vacant by the common council for a failure to give bond the failure of itself is not a vacation: there must be action by the council.[202] (b) *By the mayor.*—Necessarily the power of the mayor to remove an officer is more restricted than that of the council. Where a charter provision authorizes the mayor and council to remove an officer for cause the mayor alone can not do so.[203] A statute granting a mayor the right to appoint and remove officers does not apply to assistants who are employed in departments and who are employed by the chief.[204] In the absence of a law authorizing it the mayor can not remove without cause an officer, though appointed by him, when the term is a fixed and definite one.[205] (c) *By head of department, bureau, etc.*—Sometimes the power of removal, and particularly of those who occupy a confidential relationship, is given to the chief of the department.[206]

33 N. Y. S. 165; s. c. 85 Hun (N. Y.) 601.

[202] Kriseler v. Le Valley, 122 Mich. 576; s. c. 81 N. W. 580. Under Spokane charter the majority of the city council, after recommendation of the mayor, may remove a member of the board of health without preferring charges: Kimball v. Olmsted, 20 Wash. 629; s. c. 56 Pac. 377. A vacancy of the office of city marshal in a city of the second class must be filled by the city in Arkansas: Payne v. Rittman, 66 Ark. 201; s. c. 49 S. W. 814.

[203] State v. Donovan, 89 Maine 448; s. c. 36 Atl. 982. Power of removal by mayor and council under Mass. laws of 1896, ch. 415, and laws of 1897, ch. 95, construed: Attorney-General v. Cahill, 169 Mass. 18; s. c. 47 N. E. 433.

[204] Peters v. Bell, 51 La. An. 1621; s. c. 26 So. 442.

[205] Field v. Malster, 88 Md. 691; s. c. 41 Atl. 1087. The removal of an officer by the mayor, under the statute, takes effect at once and deprives the officer removed of his right to discharge further the functions of the office, though his action may be subsequently reviewed by the council: Heffran v. Hutchins, 160 Ill. 550; s. c. 43 N. E. 709. Power to appoint does not include power to remove: People v. McAllister, 10 Utah 357; s. c. 37 Pac. 578. For construction of charter of Greater New York and laws as to the power of the mayor to make removals, see People v. Van Wyck, 159 N. Y. 509; s. c. 54 N. E. 31; People v. Nixon, 158 N. Y. 221; s. c. 52 N. E. 1117; People v. Van Wyck, 54 N. Y. S. 675; s. c. 34 App. Div. (N. Y.) 573. Power of removal under Mich. St. (Ann.), § 653: Attorney-General v. Common Council &c., 112 Mich. 145; s. c. 70 N. W. 450. Power of removal under Neb. Comp. St., ch. 13a, §§ 21, 28: Stahlhut v. Bauer, 51 Neb. 64; s. c. 70 N. W. 496. Under laws of S. D. 1890, ch. 37, the power of the mayor to remove officers appointed by him is absolute: State v. Williams, 6 S. Dak. 119; s. c. 60 N. W. 410.

[206] As to power of removal by heads of departments under charter of Greater New York, see People v. Brady, 59 N. Y. S. 322; s. c. 43 App. Div. (N. Y.) 60. The decision of the commissioner of public works in dismissing an employe on charges preferred will not be reversed on appeal where the evidence before

§ 205. All persons charged with notice of duties and powers of municipal agents.—The statutes prescribe the powers and duties of officers and agents of a public corporation; and all persons dealing with them are charged with the knowledge of the nature of these duties and the extent of these powers.[207]

§ 206. Liability of officers to the corporations.—Public officers elected pursuant to statute by a municipal corporation are not the servants or agents of the corporation in such a sense as will enable the corporation, in the absence of a statute giving the remedy, to

the commissioner is sufficient to sustain his action: People v. Dalton, 65 N. Y. S. 426; s. c. 52 App. Div. (N. Y.) 627. A person who is the head of a bureau simply and not the head of a department has no right to remove or appoint his subordinates: Morgan v. City of Denver, 14 Colo. App. 147; s. c. 59 Pac. 619. The removal of police commissioners by the supreme court where they acted in good faith and without intention to violate law is in the discretion of the court: In re Rupp, 53 N. Y. S. 927; s. c. 33 App. Div. (N. Y.) 468.

[207] The Floyd Acceptances, 7 Wall. 666; Merchants' Bank v. Bergen Co., 115 U. S. 384; Hodges v. Buffalo, 2 Den. (N. Y.) 110; Cornell v. Town of Guilford, 1 Den. (N. Y.) 510; McDonald v. Mayor &c., 68 N. Y. 23; Schumm v. Seymour, 24 N. J. Eq. 143; Lowell Sav. Bank v. Inhabitants &c., 8 Allen (Mass.) 109; Perkinson v. St. Louis, 4 Mo. App. 322; Craycraft v. Selvage, 10 Bush (Ky.) 696; Cleveland v. State Bank, 16 Ohio St. 236; s. c. 88 Am. D. 445; Chicago v. Shober &c. Co., 6 Bradw. (Ill.) 560; Alton v. Mulledy, 21 Ill. 76; Pine Civil Tp. v. Huber Mfg. Co., 83 Ind. 121; Summers v. Board &c., 103 Ind. 262; s. c. 2 N. E. 725; Axt v. Jackson School Tp., 90 Ind. 101; Reeve School Tp. v. Dodson, 98 Ind. 497; Platter v. Board &c., 103 Ind. 360; s. c. 2 N. E. 544; Bloomington School Tp. v. National School Furnishing Co., 107 Ind. 43; s. c. 7 N. E. 760; Barton v. Sweptson, 44 Ark. 437; Dorsey Co. v. Whitehead, 47 Ark. 205; s. c. 1 S. W. 97; Wallace v. Mayor &c., 29 Cal. 180; Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442. See also, Whiteside v. United States, 93 U. S. 247; Harshman v. Bates Co., 92 U. S. 569; McClure v. Oxford Tp., 94 U. S. 429; South Ottawa v. Perkins, 94 U. S. 260; Lewis v. City of Shreveport, 108 U. S. 282; s. c. 2 S. Ct. 634; Dixon Co. v. Field, 111 U. S. 83; s. c. 4 S. Ct. 315; Carroll Co. v. Smith, 111 U. S. 556; s. c. 4 S. Ct. 539; Post v. Kendall Co., 105 U. S. 667; Daviess Co. v. Dickinson, 117 U. S. 657; s. c. 6 S. Ct. 897; Mayor &c. v. Ray, 19 Wall. 468; Vincent v. Inhabitants, 12 Cush. (Mass.) 103; Dill v. Inhabitants, 7 Met. (Mass.) 438; Spaulding v. City of Lowell, 23 Pick. (Mass.) 71; Bridgeport v. Housatonic R. Co., 15 Conn. 475; Donovan v. Mayor &c., 33 N. Y. 291; McDonald v. Mayor &c., 68 N. Y. 23; s. c. 23 Am. R. 144; Overseer &c. v. Overseers &c., 18 Johns. (N. Y.) 382; Davies v. New York &c. Co., 48 N. Y. Supr. Ct. 492; Appleby v. Mayor &c., 15 How. Pr. (N. Y.) 428; Peterson v. Mayor &c., 17 N. Y. 449; Ottoman Cahvey Co. v. City of Philadelphia (Pa.), 13 Am. & Eng. Corp. Cas. 524; Livingston v. Pippin, 31 Ala. 542; People v. Baraga Tp., 39 Mich. 554; Neely v. Yorkville, 10 S. C. 141.

maintain actions against such officers for negligence in the discharge of their official duty.[208] When an officer who is about to enter upon the discharge of his duties for a second term makes a report to, or a settlement with, the proper authorities, from which it appears that he has on hand at the close of his first term a certain sum of money, such settlement is, in the opinion of many of the courts, conclusive upon him, if the officers with whom the settlement is made acted in good faith and have no knowledge that the sum of money which he reports is not actually in his hands.[209]

§ 207. **Instances of fraudulent acts of municipal agents.**—Municipal officers and agents are held to a strict accountability in their dealings with or on behalf of the corporation, and will be held personally liable in case of injury arising either to the corporation or a third party out of any tortious act in their official capacity. If a member of a municipal board authorized to select and purchase a site for public purposes agrees with a third person to inform the latter of the site selected by such board, and that the latter shall thereupon purchase such site, and then sell it to the board at a profit, and the agreement is carried out through the aid of the officer, and the municipality is thereby made to pay a higher price for the property than it could have been purchased for from the original owner, an action can be sustained against the officer and his confederate for the amount of profit realized by them.[210]

[208] Dillon Munic. Corp. (4th ed.), § 236; Wilson v. Mayor &c., 1 Denio (N. Y.) 595; Minor v. Bank, 1 Peters 46, 69; Inhabitants &c. v. Chapin, 132 Mass. 470; Inhabitants &c. v. Fiske, 8 Cush. (Mass.) 264, 266; Dewey, J., in White v. Inhabitants &c., 10 Met. (Mass.) 108; Trafton v. Alfred, 15 Me. 258; Inhabitants &c. v. Hazzard, 12 Cush. (Mass.) 112; Commonwealth v. Genther, 17 S. & R. (Pa.) 135. Whether municipal councilors are liable to the corporation for misappropriating its funds, —see Municipality of East Missouri v. Horseman, 16 Up. Can. Q. B. 576. For payment of money on illegal order or resolution, see Daniels v. Municipal Council &c., 10 Up. Can. Q. B. 478.

[209] Boone Co. v. Jones, 54 Iowa 699; s. c. 2 N. W. 987; 7 N. W. 155; 37 Am. R. 229; State v. Grammer, 29 Ind. 530; Baker v. Preston, 1 Gilm. (Va.) 235; Morley v. Town of Metamora, 78 Ill. 394; s. c. 20 Am. R. 266; Roper v. Trustees &c., 91 Ill. 518; s. c. 33 Am. R. 60; City of Chicago v. Gage, 95 Ill. 593; s. c. 35 Am. R. 182; Cawley v. People, 95 Ill. 249.

[210] City of Boston v. Simmons, 150 Mass. 461; s. c. 23 N. E. 210; 15 Am. St. 230; Walker v. Osgood, 98 Mass. 348; Cutter v. Demmon, 111 Mass. 474; Rice v. Wood, 113 Mass. 133, 135; s. c. 18 Am. R. 459; Adams v. Paige, 7 Pick. (Mass.) 542, 550; United States v. State Bank, 96 U. S. 30, 35; Emery v. Hapgood, 7 Gray (Mass.) 55, 58; s. c. 66 Am. D. 459. All who aid in the commission of a tort are joint tortfeasors, and, as such, jointly liable

§ 208. Liability of corporation to officers.—Corporations are in general liable for their officers' salaries while they continue in office, and if they improperly remove them, they still remain liable.[211] A highway surveyor, however, can not recover from the town an amount expended by him in excess of the tax committed to him.[212] And it has been decided that a municipal officer who is kept out of his office and has not performed his duties can not maintain an action against the city to recover the fees accruing from the office.[213]

for the result of their act: Creed v. Hartmann, 29 N. Y. 591; s. c. 86 Am. D. 341; Klauder v. McGrath, 35 Pa. St. 128; s. c. 78 Am. D. 329; Moir v. Hopkins, 16 Ill. 313; s. c. 63 Am. D. 312. Defendants, who are members of the town council, with others, entered into a bond in a certain sum for the purpose of building a court-house in the town. Afterwards the town council, of which defendants were members, illegally appropriated $1,000 of the town funds to aid in building the court-house, a portion of which sum was immediately paid over. The court held that the defendants were liable for the amount thus paid, in an action brought by the taxpayers for its recovery: Russell v. Tate, 52 Ark. 541; s. c. 13 S. W. 130. The laws of New York, 1881, ch. 531, provide that municipal officers "and other persons acting for or on behalf of any town, county, village or municipal corporation" may be enjoined, in a suit by taxpayers, from committing any illegal official act, or from committing waste or injury to any property, funds or estate of such town, etc. It was held that an action will lie against city officers to prevent them from compromising for a nominal sum a final judgment in favor of the city against persons for violation of the excise law, the proceeds of which belong to the poor fund. And in such action the judgment debtors, who are alleged to be acting in collusion with the officers, are properly joined as defendants: Standart v. Burtis, 46 Hun (N. Y.) 82. The Missouri statute making town, city, state and county officers liable, etc., for converting public moneys to their own use, embraces township officers: State v. Cleveland, 80 Mo. 108. Town officers who, in constructing a ditch, act according to their best judgment, refraining from unnecessary injury, are not liable for errors of judgment in choosing the location or method of construction: Smith v. Gould, 61 Wis. 31; s. c. 20 N. W. 369. Town bonds were delivered by the town to a railroad company in exchange for its stock. A. received them as president of the company and sold them for the company. A. was also town supervisor. The court held that as he acted for the company, he was not liable to an action by the town for having sold them to bona fide purchasers, knowing them to be invalid: Farnham v. Benedict, 39 Hun (N. Y.) 22.

[211] Stadler v. City of Detroit, 13 Mich. 346; Shaw v. Mayor &c., 19 Ga. 468. Where overseers of the poor procure supplies on their own credit, instead of following the procedure laid down in the statute, they are not precluded from charging the same to the town, and demanding that the account be audited by the town board of audit: Osterhoudt v. Rigney, 98 N. Y. 222.

[212] Cloud v. Town of Norwich, 57 Vt. 448.

[213] Dolan v. Mayor &c., 68 N. Y. 274, 279; Commissioners &c. v. An-

§ 209. Indictment of municipal officers.—Provision is generally made by statute for the indictment of municipal officers for wilful misfeasance or nonfeasance in their official capacity. Thus in North Carolina "a public officer intrusted with definite powers to be exercised for the benefit of the community, who wickedly abuses them or fraudulently exceeds them, is punishable by indictment."[214] And it has been held in the state of Tennessee that the mayor and aldermen may be indicted for neglecting to keep the streets of a city or town in reasonable repair.[215]

derson, 20 Kan. 298. See also, Terhune v. Mayor &c., 88 N. Y. 247; McVeany v. Mayor &c., 80 N. Y. 185; Steubenville v. Culp, 38 Ohio St. 18; Auditors &c. v. Benoit, 20 Mich. 176. But where an officer's removal was reversed on certiorari, he was entitled to recover for the time during which he was deprived of his office, without deduction for wages earned in another capacity. This is because there is no contract in favor of the officer as there is in the ordinary relation of master and servant. He receives his salary as an incident to his office: Fitzsimmons v. City of Brooklyn, 102 N. Y. 536; s. c. 7 N. E. 787; and Andrews v. Portland, 79 Maine 484; s. c. 10 Atl. 458, to the same point, although the salary had been paid to a de facto incumbent. Such is also the rule in California: People v. Oulton, 28 Cal. 44; People v. Potter, 63 Cal. 127; People v. Smyth, 28 Cal. 21; Meagher v. Storey Co., 5 Nev. 244; Carroll v. Siebenthaler, 37 Cal. 193. Courts of equity will not, as a rule, enjoin the payment of the salary to the incumbent pending a contest: Field v. Commonwealth, 32 Pa. St. 478; Ex parte Ramshay, 83 Eng. C. L. 174; Queen v. Mayor &c., 8 Ad. & El. 633. Persons who are neither officers de jure nor de facto can not recover the salary of an officer: Samis v. King, 40 Conn. 298.

[214] State v. Glasgow, N. C. Conf. 386, 387; State v. Justices &c., 4 Hawks (N. C.) 194. See also, State v. Fishblate, 83 N. C. 654; State v. Commissioners &c., 2 N. C. Law 617; Paris v. People, 27 Ill. 73. The Illinois statutes make it a criminal offense for a town officer to withhold the town records from the county clerk's office, on the discontinuance of the township system in the county. But it was held that the indictment need not state the manner in which the town office was abolished, and that it was not necessary to a conviction that a demand should have been made on the officer for the records withheld: Baysinger v. People, 115 Ill. 419; s. c. 5 N. E. 375.

[215] Hill v. State, 4 Sneed (Tenn.) 443. See also, Phillips v. Commonwealth, 44 Pa. St. 197. The mayor and aldermen of a city are indictable for any wilful or negligent failure to discharge the duties devolved upon them by the city charter. They can not with impunity arbitrarily refuse to exercise the powers with which they are invested, nor can they wilfully prevent them from being exercised. But they constitute a part of a city government distinct from the board of audit and finance of the city, and the two can not be jointly indicted for refusal or failure to perform their duties under the charter: State v. Hall, 97 N. C. 474; s. c. 1 S. E. 683. For requisites of indictment for non-performance of offi-

cial duty, see the case last cited; also 3 Chitty Crim. Law 586, 606; State v. Mayor, 11 Humph. (Tenn.) 217; People v. Wattles, 13 Mich. 446; State v. Com'rs, 4 Dev. (N. C.) 345. One who procures himself to be sworn into a public office to which he knows he has no title is indictable at common law: Scarlet's Case, 12 Coke 98.

CHAPTER VII.

PERSONAL LIABILITY OF OFFICERS AND AGENTS.

SECTION

210. Liability on contracts — Presumption against liability.
211. The same subject continued—Negotiable instruments.
212. The same subject continued—Excess of authority, fraud, etc.
213. Exemption from liability for legislative acts.
214. The foregoing rule qualified—Breach of trust.
215. Liability of judicial officers considered.
216. Quasi-judicial officers—Corrupt motive.
217. Liability of ministerial officers.
218. The same subject continued.
219. No personal liability for strictly public acts.
220. Default of subordinates.
221. Ejection of member of council by order of mayor.
222. Negligence of recorder of deeds.
223. The same subject continued.
224. Liability of assessor of taxes.

§ 210. Liability on contracts—Presumption against liability.—Upon considerations of public policy a distinction has been established between the personal liability of public agents on contracts made in behalf of their principal, and that of private agents under like circumstances. It is presumed that persons dealing with public officers do not rely upon their individual credit; and in order to make them personally liable there must be a clear intent to that effect.[1] It

[1] Willett v. Young, 82 Iowa 292; s. c. 47 N. W. 990; 11 L. R. A. 115 (where trustees of a township were held not liable on an order directed to the town clerk to be paid out of township funds, and signed by them with the word "trustees" added to their signatures, as it was manifest from the whole instrument that there was no intention to assume liability; nor would the invalidity of the order given for property purchased for the township affect the case); Huthsing v. Bousquet, 7 Fed. 833 (where supervisors offered a reward beyond their power; but as the offer as published clearly appeared to be intended as official, they were held not liable as individuals); Hodgson v. Dexter, 1 Cranch 345 (a leading case by Chief Justice Marshall); Knight v. Clark, 48 N. J. L. 22; s. c. 2 Atl. 780; 57 Am. R. 534; Cutler v. Inhabitants &c., 121 Mass. 588; Jones v. Le Tombe, 3 Dallas 384; Crowell v. Crispin, 4 Daly (N. Y.) 100; Fox v. Drake, 8 Cowen (N. Y.) 191; Belknap v. Reinhart, 2 Wend. (N. Y.) 375; s. c. 20 Am. D. 621; Walker v. Swartwout, 12 Johns. (N. Y.) 444; s. c. 7 Am. D. 334; Osborne v. Kerr,

makes no difference whether the contract be written, by parol, or sealed.[2] But where it is evident that the officer intended to pledge his private responsibility he is liable.[3]

§ 211. The same subject continued—Negotiable instruments.—A public agent is not personally liable on negotiable instruments executed by him in his official capacity; but in the absence of intent to the contrary evident on the face of the instrument the presumption is that the agent acts in his private character, and is therefore individually liable;[4] that is, the distinction between public and private agents in respect of personal liability on contracts has been said not to apply to negotiable paper; and where a note is signed by an agent in his own name, the addition of his official title will not free him from responsibility if the body of the obligation purports to bind him personally.[5] There are cases, however, which have taken what

12 Wend. (N. Y.) 179; Rathbon v. Budlong, 15 Johns. (N. Y.) 1; Mott v. Hicks, 1 Cowen (N. Y.) 513; s. c. 13 Am. D. 550; Sheffield v. Watson, 3 Cai. (N. Y.) 69; Bronson v. Woolsey, 17 Johns. (N. Y.) 46; Brown v. Austin, 1 Mass. 208; s. c. 2 Am. D. 11; Tippets v. Walker, 4 Mass. 595, 597; Bainbridge v. Downie, 6 Mass. 253; Dawes v. Jackson, 9 Mass. 464; Freeman v. Otis, 9 Mass. 260; s. c. 6 Am. D. 66; Comer v. Bankhead, 70 Ala. 493; Wallis v. Johnson School Tp., 75 Ind. 368; Perrin v. Lyman, 32 Ind. 16; McClenticks v. Bryant, 1 Mo. 598; s. c. 14 Am. D. 310; Tutt v. Hobbs, 17 Mo. 486; Lyon v. Irish, 58 Mich. 518; s. c. 25 N. W. 502; Stinchfield v. Little, 1 Me. 231; s. c. 10 Am. D. 65; Bernard v. Torrance, 5 Gill & J. (Md.) 383. It has been said, however, that this rule in regard to public officers does not apply in favor of the officers of a municipal corporation, which is capable of making contracts for itself and is liable to be sued thereon: Simonds v. Heard, 23 Pick. (Mass.) 120; Hall v. Cockrell, 28 Ala. 507. And see City of Providence v. Miller, 11 R. I. 272; s. c. 23 Am. R. 453.

[2] Hodgson v. Dexter, 1 Cranch 345; Knight v. Clark, 48 N. J. L. 22; s. c. 2 Atl. 780; 57 Am. R. 534; Unwin v. Wolseley, 1 T. R. 674; Walker v. Swartwout, 12 Johns. (N. Y.) 444; s. c. 7 Am. D. 334.

[3] Simonds v. Heard, 23 Pick. (Mass.) 120; s. c. 34 Am. D. 41; Ogden v. Raymond, 22 Conn. 379; s. c. 58 Am. D. 429; Bayliss v. Pearson, 15 Iowa 279; Wing v. Glick, 56 Iowa 473; s. c. 9 N. W. 384; 37 Am. R. 142, n.; Trustees &c. v. Rautenberg, 88 Ill. 219; Ross v. Brown, 74 Maine 352; Fowler v. Atkinson, 6 Minn. 578; Sheffield v. Watson, 3 Cai. (N. Y.) 69; Gill v. Brown, 12 Johns. (N. Y.) 385; Exchange Bank v. Lewis Co., 28 W. Va. 273; City of Providence v. Miller, 11 R. I. 272; s. c. 23 Am. R. 453; Horsley v. Bell, 1 Bro. C. C. 101, n.

[4] Story Agency, § 306; 1 Daniel Neg. Inst., § 445; Tiedeman Comm. Paper, § 137; Mechem Public Offices and Officers, § 821 et seq.

[5] Trustees &c. v. Rautenberg, 88 Ill. 219; Fowler v. Atkinson, 6 Minn. 578; Wing v. Glick, 56 Iowa 473; s. c. 9 N. W. 384; 37 Am. R. 142, n.; Exchange Bank v. Lewis Co., 28 W. Va. 273; Ross v. Brown, 74 Maine 352; Bayliss v. Pearson, 15 Iowa 279; American Ins. Co. v. Stratton,

is termed by a standard text-writer[6] "a praiseworthy step" in holding that the official designation is not a mere descriptio personæ, but indicates an intent to charge the corporation.[7] Whether parol evidence is admissible to show that a note containing a promise, individual in form, but executed officially, was intended to bind the corporation, is a question not settled. It was held in Iowa that extrinsic evidence could not be resorted to in such a case;[8] but in Minnesota and Missouri the prevailing rule in cases of private agency is applied, and the ambiguity may be explained.[9]

§ 212. The same subject continued—Excess of authority, fraud, etc.—The rule that all persons are bound to know the law precludes them from alleging ignorance of the limits and extent of authority conferred on a public officer;[10] which is no more than saying that the latter does not ordinarily warrant the validity of his contracts; but his express representations of matter of fact relating to his agency are binding upon him;[11] and he must answer for fraudulent concealments or misstatements of such facts.[12] So he may, by denying his

59 Iowa 696; s. c. 13 N. W. 763; Forcey v. Caldwell (Pa.), 9 Atl. 466. Cf. Lyon v. Adamson, 7 Iowa 509; Baker v. Chambles, 4 Greene (Iowa) 428.

[6] Tiedeman Comm. Paper, § 137.

[7] School Town of Monticello v. Kendall, 72 Ind. 91; s. c. 37 Am. R. 139; Moral School Tp. v. Harrison, 74 Ind. 93; Andrews v. Estes, 11 Maine 267; Wallis v. Johnson School Tp., 75 Ind. 368. See also, Knight v. Clark, 48 N. J. L. 22; s. c. 2 Atl. 780; 57 Am. R. 534 (case of a sealed note); Sanborn v. Neal, 4 Minn. 126; s. c. 77 Am. D. 502; Dugan v. United States, 3 Wheat. 172; Balcombe v. Northrup, 9 Minn. 172; Hodges v. Runyan, 30 Mo. 491; McGee v. Laramore, 50 Mo. 425.

[8] American Ins. Co. v. Stratton, 59 Iowa 696; s. c. 13 N. W. 763.

[9] Sanborn v. Neal, 4 Minn. 126; s. c. 77 Am. D. 502; McClellan v. Reynolds, 49 Mo. 312. See also, Pratt v. Baupre, 13 Minn. 187; Musser v. Johnson, 42 Mo. 74; s. c. 97 Am. D. 316; Shuetze v. Bailey, 40 Mo. 69; Washington Gas Co. v. Seminary, 52 Mo. 480; Klosterman v. Loos, 58 Mo. 290; Turner v. Thomas, 10 Mo. App. 338. See Second Nat. Bank v. Midland &c. Co., 155 Ind. 581; s. c. 58 N. E. 833.

[10] Lee v. Munroe, 7 Cranch 366; The Floyd Acceptances, 7 Wall. 666, 680; Whiteside v. United States, 93 U. S. 247; Hull v. Marshall Co., 12 Iowa 142; Clark v. City of Des Moines, 19 Iowa 199; s. c. 87 Am. D. 423; Newman v. Sylvester, 42 Ind. 112; Mayor &c. v. Eschbach, 18 Md. 276, 283; Mayor &c. v. Reynolds, 20 Md. 1; s. c. 83 Am. D. 535; State v. Hays, 52 Mo. 578; State v. Bank &c., 45 Mo. 528; People v. Bank, 24 Wend. (N. Y.) 431; Delafield v. Illinois, 26 Wend. (N. Y.) 192; Silliman v. Fredericksburg &c. R. Co., 27 Gratt. (Va.) 119; State v. Hastings, 10 Wis. 518. See also, § 205, ante.

[11] Belisle v. Clark, 49 Ala. 98; Jefts v. York, 10 Cush. (Mass.) 392; Bartlett v. Tucker, 104 Mass. 336; s. c. 6 Am. R. 240; Kroeger v. Pitcairn, 101 Pa. St. 311; s. c. 47 Am. R. 718; Bank &c. v. Wray, 4 Strob. (S. C.) 87; s. c. 51 Am. D. 659; McCurdy v. Rogers, 21 Wis. 199; s. c. 91 Am. D. 468.

[12] Smout v. Ilbery, 10 M. & W. 1; Bank &c. v. Wray, 4 Strob. (S. C.) 87; s. c. 51 Am. D. 659; Kroeger v.

agency, estop himself from subsequently asserting it to avoid liability;[13] and the obligation may be enforced against him where his principal is a legal myth.[14] To hold an officer liable for conspiracy to defraud the city it must be shown that he was a party to the conspiracy, or had knowledge, or reason to know that certain bills paid were wrong.[15] Where the charter provides that if any city officer shall commit any fraud on the city he shall be guilty of a misdemeanor, an indictment charging the approval of certain unauthorized bills, knowing no contract had been made, and that the acts were in violation of law and were done with intent to commit a fraud on the city, is not sufficient without charging that the bills approved created a charge against the city.[16] Where acts of officers are done under color, and in excess, of authority, and in consequence the city and plaintiff suffer injury, recovery may be had against them in their official capacity, and as individuals, although sued only as officers.[17] A suit alleging a conspiracy to defraud between the mayor and a street commissioner has been sustained.[18]

§ 213. Exemption from liability for legislative acts.—It is a well-settled and salutary rule that the motives of the individual members of a legislative assembly in voting for a particular law can not be inquired into and its supporters made personally liable upon an allegation that they acted maliciously towards the person aggrieved by the passage of the law. Whenever the officers of a municipal corporation are vested with legislative powers, they hold and exercise them for the public good, and are clothed with all the immunities of government, and are exempt from all liability for their mistaken use.[19] Thus where a mayor sought to recover damages from the aldermen of a town by reason of an ordinance by which they "unlawfully and maliciously deprived him of his legal rights, fees, privileges and emoluments, and of his office of mayor," a demurrer was sustained although the defendants might have exceeded the measure of their authority in passing the ordinance in question.[20] Mem-

Pitcairn, 101 Pa. St. 311; s. c. 47 Am. R. 718.

[13] Freeman v. Otis, 9 Mass. 272; s. c. 6 Am. D. 66; McClenticks v. Bryant, 1 Mo. 598.

[14] Blakely v. Bennecke, 59 Mo. 193.

[15] Feeley v. Wurster, 54 N. Y. S. 1060; s. c. 25 Misc. (N. Y.) 544.

[16] People v. Kane, 161 N. Y. 380; s. c. 55 N. E. 946.

[17] Mock v. City of Santa Rosa, 126 Cal. 330; s. c. 58 Pac. 826.

[18] Saxe v. City of Burlington, 70 Vt. 448; s. c. 41 Atl. 438.

[19] County Com'rs v. Duckett, 20 Md. 469; Borough of Freeport v. Marks, 59 Pa. St. 253. See also, Cooley Torts (2d ed.) 443.

[20] Jones v. Loving, 55 Miss. 109. "If they exceeded their authority, it was a brutum fulmen, and could not for one moment have deprived the plaintiff of any privileges, emoluments or fees of his office. If he

bers of a council are not liable officially or individually for voting to repeal an ordinance.[21]

§ 214. **The foregoing rule qualified—Breach of trust.**—But if the conduct of members of a municipal legislative board amounts to a breach of trust, or a conversion of trust money belonging to the municipality, they are personally liable for tort. A declaration in an action by a city against a former chairman of its water board and another person alleged that the board was authorized to buy land for the city for a reservoir; that the chairman, of whose position, knowledge and authority the other defendant had knowledge, knew and shared in determining the action of the board regarding the purchase; that both together, taking advantage of this and intending to defraud the city, corruptly agreed that the chairman should impart to the other the doings of the board in selecting the land and the parcel it considered fit for a reservoir site, whereupon such other was to become the purchaser thereof; that the board should afterwards buy it at an advanced price from him and that the profits should be divided between them; that in pursuance of this agreement the chairman revealed the particular lot thought suitable by the board to the other, who thereupon bought it, and the board, influenced by the chairman, subsequently purchased it from him at an advance; and that the two divided the profits of the transaction. A demurrer was overruled on the ground that a good cause of action was disclosed against both defendants for the injury sustained by the city.[22] The aldermen of a town, having executed a bond binding themselves to build within the corporate limits a court-house to be given to the county, illegally voted an appropriation of a sum out of the municipal funds to aid in such building, which was immediately paid by the treasurer on the order of the mayor. It was held that the taking of the money by the defendants was the conversion of a trust fund for which they were liable.[23] Where a treasurer collected a tax, which was levied to pay certain warrants, and diverted the money, the remedy is against the officer and not the city.[24]

chose voluntarily to yield obedience to a void law, it was his own folly, for which the courts can afford him no relief by awarding damages against the individuals voting for the ordinance." See also, McCrea v. Chahoon, 54 Hun (N. Y.) 577; s. c. 8 N. Y. S. 88.

[21] Winbish v. Hamilton, 47 La. An. 246; s. c. 16 So. 856.

[22] City of Boston v. Simmons, 150 Mass. 461; s. c. 23 N. E. 210.

[23] Russell v. Tate, 52 Ark. 541; s. c. 13 S. W. 130.

[24] Schulenberg &c. Co. v. City of East St. Louis, 63 Ill. App. 214; s. c. 166 Ill. 232; 46 N. E. 728; City of Springfield v. Edwards, 84 Ill. 626; City of East St. Louis v. Flannigan, 26 Ill. App. 449.

An officer of the city who has in good faith paid interest coupons and turned them over to the city is entitled to credit therefor.[25]

§ 215. **Liability of judicial officers considered.**—As long ago as in the time of Lord Coke it was said: "Such as are by law made judges of another shall not be criminally accused or made liable to an action for what they do as judges;"[26] and the principles which should govern such actions have been settled by a vast number of cases, although their application is sometimes difficult. Where there is no jurisdiction at all there is no judge,[27] and the protection extends only to judicial decisions or acts of a judicial character and not to mere administrative acts. But where the court, though of limited jurisdiction, has, in a given case, jurisdiction of the subject-matter[28] and of the person interested, a judicial officer is not civilly liable for an erroneous decision, however gross the error may have been or however bad the motive which inspired it.[29] Thus, where the mayor of a city had the same jurisdiction as justices of the peace he was held not liable to a civil action for false imprisonment for "corruptly and maliciously" retaining jurisdiction and imposing a fine and imprisonment in default of payment, after the defendant had upon proper affidavit moved for a change of venue, the statute requiring him to grant the motion under such circumstances.[30]

[25] City of Huron v. Meyers, 13 S. D. 420; s. c. 83 N. W. 553.

[26] Floyd v. Barker, 12 Coke 23.

[27] Perkin v. Proctor, 2 Wils. 382; Marshalsea Case, 10 Coke 68–76.

[28] By which is not meant simply jurisdiction of the particular case then occupying the attention of the court, but jurisdiction of the class of cases to which the particular case belongs: Jackson v. Smith, 120 Ind. 520, 522; s. c. 22 N. E. 431; Yates v. Lansing, 5 Johns. (N. Y.) 282.

[29] Gwynne v. Pool, Lutw. 290, 297; Bradley v. Fisher, 13 Wall. 335; Kress v. State, 65 Ind. 106; Elmore v. Overton, 104 Ind. 548; s. c. 4 N. E. 197; 54 Am. R. 343; Pratt v. Gardner, 2 Cush. (Mass.) 63; Allec v. Reece, 39 Fed. 341; s. c. 40 Alb. L. J. 226; Little v. Moore, 4 N. J. L. 74; Clark v. Holdridge, 58 Barb. (N. Y.) 61; Dyer v. Smith, 12 Conn. 384. There is an interesting and instructive discussion in Cooley Torts, ch. 14; Throop Public Officers, in loco; Mechem Public Offices and Officers, § 619 et seq.; and particularly State v. Wolever, 127 Ind. 306; s. c. 26 N. E. 762, where the subject of immunity of judicial officers from private suits is fully discussed. "A judicial act is one which involves the exercise of a discretion, in which something has to be heard and decided. A ministerial act is one which the law points out as necessary to be done under the circumstances without leaving any choice of alternative courses:" Clerk & Lindsell Torts 574. The act of a mayor in issuing a warrant of arrest for the violation of an illegal and void ordinance is judicial and gives no cause of action against him, or the officer executing it, or the city itself: Trammell v. Town of Russellville, 34 Ark. 105.

[30] "The ruling on such a motion is a judicial act:" State v. Wolever,

§ 216. Quasi-judicial officers—Corrupt motive.—There are various duties involving the exercise of judgment and discretion which nevertheless are on the border-line between those of a strictly judicial and those of a ministerial nature. In such cases the rule is laid down in many decisions that the test of personal liability for error in their performance is that of honest or corrupt motive.[31] Thus, a superin-

127 Ind. 306; s. c. 26 N. E. 762. The reader will find, by consulting the authorities and text-writers cited in this section, that the principles here enunciated are of general application; and as the proceedings of municipal courts furnish no peculiarities or exceptions, the author does not deem it expedient to enter into a more minute consideration of the topic. See also, Hommert v. Gleason, 38 N. Y. St. 342; s. c. 14 N. Y. S. 568, which is almost identical with the case cited above; Bell v. McKinney, 63 Miss. 187; Johnston v. Moorman, 80 Va. 131; Merwin v. Rogers, 28 N. Y. St. 404; s. c. 7 N. Y. S. 633; Burns v. Norton, 59 Hun (N. Y.) 616; Going v. Dinwiddie, 86 Cal. 633; s. c. 25 Pac. 129; the leading case of Lange v. Benedict, 73 N. Y. 12; the title on "False Imprisonment," in 7 Am. & Eng. Encyc. Law 661 et seq.; and an article by Arthur Biddle, Esq., on "Liability of Officers Acting in a Judicial Capacity," 15 Am. Law Rev. 427 (July, 1881).

[31] Cooley Torts (2d ed.) 482; Linford v. Fitzroy, 13 Q. B. 240; Kemp v. Neville, 10 C. B. (N. S.) 523; s. c. 31 L. J. C. P. 158; 7 Jur. (N. S.) 913; 4 L. T. 640; 10 W. R. 6; Davis v. Capper, 10 B. & C. 28; Burley v. Bethune, 1 Marsh. 220; Ashby v. White, 2 Ld. Raym. 938; s. c. 6 Mod. 45; 1 Salk. 19; Pruden v. Love, 67 Ga. 190; Donahoe v. Richards, 38 Maine 379; s. c. 61 Am. D. 256; Downing v. Herrick, 47 Maine 462; Bevard v. Hoffman, 18 Md. 479; s. c. 81 Am. D. 618; Friend v. Hamill, 34 Md. 298; Elbin v. Wilson, 33 Md. 135; Raynsford v. Phelps, 43 Mich. 342; s. c. 5 N. W. 403; 38 Am. R. 189; McCormick v. Burt, 95 Ill. 263; s. c. 35 Am. R. 163; Billings v. Lafferty, 31 Ill. 318; Garfield v. Douglass, 22 Ill. 100; Dritt v. Snodgrass, 66 Mo. 286; s. c. 27 Am. R. 343; Edwards v. Ferguson, 73 Mo. 686; Pike v. Megoun, 44 Mo. 491; Reed v. Conway, 20 Mo. 22; Henderson v. Smith, 26 W. Va. 829; s. c. 53 Am. R. 139; Keenan v. Cook, 12 R. I. 52; Ramsey v. Riley, 13 Ohio 157; Gregory v. Small, 39 Ohio St. 346; Stewart v. Southard, 17 Ohio 402; Wilson v. Marsh, 34 Vt. 352; Hitch v. Lambright, 66 Ga. 228; Spitznogle v. Ward, 64 Ind. 30; Morrison v. McFarland, 51 Ind. 206; State v. Robb, 17 Ind. 536; McOsker v. Burrell, 55 Ind. 425; Morgan v. Dudley, 18 B. Mon. (Ky.) 693; Bullitt v. Clement, 16 B. Mon. (Ky.) 193; Chrisman v. Bruce, 1 Duv. (Ky.) 63; Miller v. Rucker, 1 Bush (Ky.) 135; Gregory v. Brown, 4 Bibb (Ky.) 28; McCord v. High, 24 Iowa 336; Howe v. Mason, 14 Iowa 510; Macklot v. City of Davenport, 17 Iowa 379; Muscatine &c. R. Co. v. Horton, 38 Iowa 33; Wheeler v. Patterson, 1 N. H. 88; Adams v. Richardson, 43 N. H. 212; Hannon v. Grizzard, 96 N. C. 293; s. c. 2 S. E. 600; Wilkes v. Dinsman, 7 How. (N. Y.) 39; Jenkins v. Waldron, 11 Johns. (N. Y.) 114; Millard v. Jenkins, 9 Wend. (N. Y.) 298; Wickware v. Bryan, 11 Wend. (N. Y.) 545; Tompkins v. Sands, 8 Wend. (N. Y.) 462; Goetcheus v. Matthewson, 61 N. Y. 420; Peavey v. Robbins, 3 Jones L. (N. C.) 339; Moran v. Rennard, 3 Brewst. (Pa.)

tendent of schools is not liable for a mere mistake in his decision on the subject of licensing a teacher;[32] but an action lies if he refuses a license from corrupt or malicious motives;[33] and the same rules control liability for dismissing a teacher.[34] In Connecticut it was held that proof of actual malicious intent would sustain an action against a wharfmaster for ordering the removal of a vessel from a dock.[35]

§ 217. Liability of ministerial officers.—A ministerial officer is under constant obligation to discharge the duties of his office with reasonable skill and care, and if he fails in these and damage ensues to one specially interested in the discharge of such duties he becomes liable.[36] Conversely, as it is the duty of a purely ministerial officer

601; Weckerly v. Geyer, 11 S. & R. (Pa.) 35; Rail v. Potts, 8 Humph. (Tenn.) 225; McTeer v. Lebow, 85 Tenn. 121; s. c. 2 S. W. 18; Throop Public Officers, § 722; Mechem Public Offices and Officers, § 640; Bishop Non-Contract Law, § 789.

[32] Stewart v. Southard, 17 Ohio 402; s. c. 49 Am. D. 463; Donahoe v. Richards, 38 Maine 376; s. c. 61 Am. D. 256.

[33] Elmore v. Overton, 104 Ind. 548; s. c. 4 N. E. 197; 54 Am. R. 343; Burton v. Fulton, 49 Pa. St. 151.

[34] Gregory v. Small, 39 Ohio St. 346; Morrison v. McFarland, 51 Ind. 206; McCormick v. Burt, 95 Ill. 263; s. c. 35 Am. R. 163; Dritt v. Snodgrass, 66 Mo. 286; s. c. 27 Am. R. 343.

[35] Gregory v. Brooks, 37 Conn. 365.

[36] Olmsted v. Dennis, 77 N. Y. 378; Rowning v. Goodchild, 2 W. Bl. 906; Ashby v. White, 2 Ld. Raym. 938; Lane v. Cotton, 1 Salk. 17; Ferguson v. Earl of Kinnoull, 9 Cl. & F. 251; Amy v. Supervisors, 11 Wall. 136; Henly v. Mayor &c., 5 Bing. 91; Sawyer v. Corse, 17 Gratt. (Va.) 230; s. c. 94 Am. D. 445; Lyon v. Goree, 15 Ala. 360; Briggs v. Coleman, 51 Ala. 561; Eslava v. Jones, 83 Ala. 139; s. c. 3 So. 317; Bassett v. Fish, 12 Hun (N. Y.) 209; Piercy v. Averill, 37 Hun (N. Y.) 360; Bartlett v. Crozier, 15 Johns. (N. Y.) 250; Shepherd v. Lincoln, 17 Wend. (N. Y.) 250; Jenner v. Joliffe, 9 Johns. (N. Y.) 381; Bailey v. Mayor &c., 3 Hill (N. Y.) 531; Adsit v. Brady, 4 Hill (N. Y.) 630; s. c. 38 Am. D. 669; Wilson v. Mayor, 1 Denio (N. Y.) 595; s. c. 43 Am. D. 719; Hickok v. Trustees &c., 15 Barb. (N. Y.) 427; Robinson v. Chamberlain, 34 N. Y. 389; s. c. 90 Am. D. 713; Smith v. Wright, 24 Barb. (N. Y.) 170; Fish v. Dodge, 38 Barb. (N. Y.) 163; Hutson v. Mayor, 9 N. Y. 163; Hicks v. Dorn, 42 N. Y. 47; Hover v. Barkhoof, 44 N. Y. 113; Bennett v. Whitney, 94 N. Y. 302; Woolley v. Baldwin, 101 N. Y. 688; s. c. 5 N. E. 573; Clark v. Miller, 54 N. Y. 528; McCarthy v. City of Syracuse, 46 N. Y. 194; Keith v. Howard, 24 Pick. (Mass.) 292; Conway v. Russell, 151 Mass. 581; s. c. 24 N. E. 1026; Williams v. Powell, 101 Mass. 467; Nowell v. Wright, 3 Allen (Mass.) 166; Raynsford v. Phelps, 43 Mich. 342; s. c. 5 N. W. 403; 38 Am. R. 189; McGuire v. Galligan, 57 Mich. 38; s. c. 23 N. W. 479; Grider v. Tally, 77 Ala. 422; s. c. 54 Am. R. 65; Choteau v. Rowse, 56 Mo. 65; St. Joseph &c. Ins. Co. v. Leland, 90 Mo. 177; s. c. 2 S. W. 431; 59 Am. R. 9; Rounds v. Mansfield, 38 Maine 586; Stevens v. Dudley, 56 Vt. 158; County Com'rs v.

to do, not reason why,[37] he incurs no liability for injuries suffered without negligence or corrupt intent on his part.[38] A judicial or quasi-judicial officer may also have ministerial functions to perform; and in respect of these, the absolute protection commonly afforded to officers in the exercise of judicial or legislative functions does not extend.[39] Where a city is liable to an abutting property owner for damages sustained by street grading the officers who participate are also liable as co-trespassers.[40]

§ 218. The same subject continued.—A ministerial act has been defined to be "official action, the result of performing a certain and specific duty, arising from fixed and designated facts;"[41] and again, as "one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done."[42] Owing to the multitude and complexity of

Duckett, 20 Md. 468; County Com'rs v. Baker, 44 Md. 1; Hayes v. Porter, 22 Maine 371; Long v. Long, 57 Iowa 497; s. c. 10 N. W. 875; McCord v. High, 24 Iowa 336; Kolb v. O'Brien, 86 Ill. 210; Dilcher v. Raap, 73 Ill. 266; Governor v. Dodd, 81 Ill. 162; McClure v. Hill, 36 Ark. 268; Collins v. McDaniel, 66 Ga. 203. Allen v. Commonwealth, 83 Va. 94; s. c. 1 S. E. 607, holds that where a duty is of such a character as to leave no margin whatever for the exercise of judgment the law must be obeyed to the very letter. - - - The repeal of the law making officers civilly and criminally liable for neglect of duty does not affect the common-law action for neglect of duty: Hanlon v. Partridge, 69 N. H. 88; s. c. 44 Atl. 807; Donovan v. Partridge, 69 N. H. 88; s. c. 44 Atl. 807; Gallagher v. Partridge, 69 N. H. 88; s. c. 44 Atl. 807.

[37] Mechem Public Offices and Officers, § 661.

[38] Sage v. Laurain, 19 Mich. 137; Highway Com'rs v. Ely, 54 Mich. 173, 175. In such cases he can not, under any principle of law, be made a trespasser: Harding v. Woodcock, 137 U. S. 43; s. c. 11 S. Ct. 6.

[39] Grider v. Tally, 77 Ala. 422; s. c. 54 Am. R. 65; Thompson v. Holt, 52 Ala. 491; People v. Provines, 34 Cal. 520; People v. Bush, 40 Cal. 344; Throop Public Officers, § 539.

[40] Rives v. City of Columbia, 80 Mo. App. 173. But this rule was not applied where a barge was hired by the commissioner of public works for the use of the city and the barge was sunk from improper loading: Interstate &c. Co. v. City of New Orleans, 52 La. An. 1859; s. c. 28 So. 310. In the absence of evidence that a city marshal knew of the unhealthy condition of a cell in which he placed a prisoner and that he had control of the cells he is not liable for injuries: Bishop v. Lucy, 21 Tex. Civ. App. 326; s. c. 50 S. W. 1029.

[41] Grider v. Tally, 77 Ala. 422; s. c. 54 Am. R. 65.

[42] Flournoy v. City of Jeffersonville, 17 Ind. 169. See also, Ex parte Batesville &c. R. Co., 39 Ark. 82; Pennington v. Streight, 54 Ind. 376; Evans v. Etheridge, 96 N. C. 42; s. c. 1 S. E. 633. And further definitions in State v. Johnson, 4 Wall.

the duties annexed to public offices, the courts in many instances find considerable difficulty in determining whether a particular act is judicial or ministerial. It is held in some states that highway officers charged by statute with the duty of keeping highways in repair, and provided with funds for that purpose, act in a ministerial capacity, and are liable for injuries suffered by their neglect.[43] The board of street commissioners of a Wisconsin city, disregarding the requirement of the charter that all work for the city should be let by contract, resolved that the work of repairing and reconstructing a bridge should be done by themselves under the supervision of their committee and the superintendent appointed by them. The court decided that although they were not amenable to any one for their adoption of plans and specifications, yet in the execution of the work they were mere ministerial officers and not judicial or legislative, and accordingly they were liable to third persons for negligence or misfeasance.[44]

§ 219. No personal liability for strictly public acts.—An officer can not be subjected to a private action for neglect of a duty to be discharged exclusively for the benefit of the public even by a person specially injured thereby, and though the act was wilful and malicious.[45] "He must show the wrong which he specially suffers," said Judge Cooley, "and damage alone does not constitute a wrong."[46] Thus in the case last cited, where a county supervisor approved the bond of a treasurer knowing him to be in default, but not disclosing the fact to the surety, no right of action accrued to the latter.[47] And

475, 498; Sullivan v. Shanklin, 63 Cal. 247, 251; Morton v. Comptroller-General, 4 S. C. 430, 474; Commissioner v. Smith, 5 Tex. 471; Arberry v. Beavers, 6 Tex. 457; Raines v. Simpson, 50 Tex. 495; s. c. 32 Am. R. 609; Clerk & Lindsell Torts 574.

[43] Bennett v. Whitney, 94 N. Y. 302; People v. Town Auditors, 75 N. Y. 316; People v. Town Auditors, 74 N.Y. 310; Warren v. Clement, 24 Hun (N. Y.) 472; Hover v. Barkhoof, 44 N. Y. 113; Adsit v. Brady, 4 Hill (N. Y.) 630; s. c. 40 Am. D. 305; Robinson v. Chamberlain, 34 N. Y. 389; s. c. 90 Am. D. 713; Babcock v. Gifford, 29 Hun (N. Y.) 186; Lament v. Haight, 44 How. Pr. (N. Y.) 1; Garlinghouse v. Jacobs, 29 N. Y. 297; Piercy v. Averill, 37 Hun (N. Y.) 360, holding the mayor and aldermen of a city liable; Hines v. Lockport, 50 N. Y. 236; Weed v. Ballston Spa, 76 N. Y. 329; Pomfrey v. Village of Saratoga Springs, 104 N. Y. 459; s. c. 11 N. E. 43; McCord v. High, 24 Iowa 336; Tearney v. Smith, 86 Ill. 391; Bostwick v. Barlow, 14 Hun (N. Y.) 177.

[44] Robinson v. Rohr, 73 Wis. 436; s. c. 40 N. W. 668; 9 Am. St. 810.

[45] Held v. Bagwell, 58 Iowa 139; s. c. 12 N. W. 226.

[46] Cooley Torts (2d ed.) 449.

[47] Held v. Bagwell, 58 Iowa 139; s. c. 12 N. W. 226. If a policeman were to neglect his duty to preserve the peace and protect property, whereby some person was injured by violence or his house robbed, it is

where the charter of a city required that certain work should be awarded by the aldermen to the lowest bidder, but those officers, in violation of their duty, gave the contract to one whose bid was higher than the plaintiff's, the latter being in fact the lowest, it was adjudged that the aldermen were not liable, their duty being of an essentially public nature.[48] The same is true, also, of the official act of a highway commissioner in improperly opening or discontinuing a road to the prejudice of an individual,[49] and the neglect of a quarantine officer to take ordinary precautions to prevent the spread of contagion.[50]

§ 220. **Default of subordinates.**—Public officers or agents engaged in the public service, or acting for public objects, whether their appointment emanates from particular public bodies or is derived from general laws, and whether those objects are of a local or general nature, are not responsible for the misfeasances or positive wrongs, or for the nonfeasance or negligence or omissions of duty, of the subagents or servants or other persons properly employed by and under them in the discharge of their official duties.[51] But the principal is liable if he directs or authorizes the wrong,[52] or fails to require his deputies to observe statutory regulations,[53] or if he neglects to superintend properly the discharge of their duties,[54] or negligently

clear that there is no private remedy against the officer: Cooley Torts (2d ed.) 448; Shearman & Redf. Neg. (5th ed.), § 316.

[48] East River &c. Co. v. Donnelly, 93 N. Y. 557. See also, Strong v. Campbell, 11 Barb. (N. Y.) 135; Martin v. Mayor &c., 1 Hill (N. Y.) 545; Butler v. Kent, 19 Johns. (N. Y.) 223; Ashby v. White, 1 Salk. 19.

[49] Sage v. Laurain, 19 Mich. 137.

[50] Cooley Torts (2d ed.) 450; citing City of Freeport v. Isbell, 83 Ill. 440; White v. Marshfield, 48 Vt. 20; Brinkmeyer v. City of Evansville, 29 Ind. 187; Ogg v. Lansing, 35 Iowa 495; Western College &c. v. Cleveland, 12 Ohio St. 375; Hill v. Charlotte, 72 N. C. 55; s. c. 21 Am. R. 451; City of Pontiac v. Carter, 32 Mich. 164.

[51] Story Agency (9th ed.), § 319; Story Bailments (9th ed.), §§ 461, 462; Robertson v. Sichel, 127 U. S. 507; s. c. 8 S. Ct. 1286. See also, Holliday v. St. Leonard, 11 C. B. (N. S.) 192; Duncan v. Findlater, 6 Cl. & F. 894; Humphreys v. Mears, 1 M. & R. 187; Sutton v. Clarke, 6 Taunt. 29, 34; Harris v. Baker, 4 M. & S. 27; Hall v. Smith, 2 Bing. 156; Donovan v. McAlpin, 85 N. Y. 185; s. c. 39 Am. R. 649; Finch v. Board &c., 30 Ohio St. 37; s. c. 27 Am. R. 414.

[52] Ely v. Parsons, 55 Conn. 83; s. c. 10 Atl. 499; Tracy v. Cloyd, 10 W. Va. 19.

[53] Bishop v. Williamson, 11 Maine 495, where a postmaster was held liable for the default of one whom he allowed to have the care of the mails without being sworn according to law.

[54] Dunlop v. Munroe, 7 Cranch 242; Schroyer v. Lynch, 8 Watts (Pa.) 453; Ford v. Parker, 4 Ohio St. 576.

employs or retains unfit or improper persons.[55] There is also an important distinction to the effect that if the inferior or subagent holds not an office known to the law, but his appointment is private and discretionary with the officer, the latter is responsible for his acts.[56] This is illustrated in a recent Connecticut case, where a selectman, for the purpose of cleaning a highway obstructed by the growth of trees and shrubbery, directed a laborer employed by him "to cut the brush and the trees and make the road passable." No trees were pointed out and no limits given, nor any expression of judgment of the selectman, but the matter was left to the judgment and discretion of the laborer, who, in good faith, cut down some trees on the land of an adjoining owner, the removal of which was not necessary. The selectman was held liable for the damage.[57] So, also, an officer is liable for the defaults of his private servant or agent within the scope of his employment;[58] and ministerial officers generally, who are charged with the performance of duties to individuals, as distinguished from purely public duties, are subject to the rule of respondeat superior.[59]

§ 221. Ejection of member of council by order of mayor.—A statute provided that the mayor should be ex officio president of the council and preside at its meetings, and he was also authorized by an ordinance "to preserve order and decorum and to decide all questions of order, subject to an appeal to the council." An alderman's behavior was insulting and disorderly, but did not threaten personal

[55] Wiggins v. Hathaway, 6 Barb. (N. Y.) 632; Schroyer v. Lynch, 8 Watts (Pa.) 453. See also, Throop Public Officers, § 592.

[56] The distinction is more fully stated in a note to the case of Wilson v. Peverly, 1 Am. L. Cas. (5th ed.), top p. 785. In Shepherd v. Lincoln, 17 Wend. (N. Y.) 250, it was held, Cowen, J., delivering the opinion, that a superintendent of repairs on the canals of the state is personally liable in an action on the case for damages sustained by an individual through the negligence of workmen employed in making repairs.

[57] Ely v. Parsons, 55 Conn. 83; s. c. 10 Atl. 499. See also, County Com'rs v. Duvall, 54 Md. 351.

[58] Mechem Public Offices and Officers, § 802.

[59] Such as recorders of deeds: Van Schaick v. Sigel, 60 How. Pr. (N. Y.) 122. See also, Smith v. Holmes, 54 Mich. 104; s. c. 19 N. W. 767. Clerks of courts: McNutt v. Livingston, 7 Sm. & M. (Miss.) 641; Snedicor v. Davis, 17 Ala. 472. Sheriffs: Mechem Public Offices and Officers, § 798. A register of deeds is liable for the penalty imposed by statute for the issue of a marriage license without reasonable inquiry as to the age of the parties, if either is under eighteen, where a blank license signed by him is filled up by a person specially deputized by him for the purpose, though the deputy made inquiry: Cole v. Laws, 108 N. C. 185; s. c. 12 S. E. 985.

injury nor arrest the progress of business, and, failing to observe the mayor's admonition, he was conducted out of the council chamber by the chief of police under an order from the mayor. The court held that the obstreperous member was entitled to an action for damages against both the mayor and chief of police.[60] "The ordinance is only declaratory of the common law," said the court; "it neither in terms nor spirit increases or extends the duties or powers usually pertaining to the position [of the president of the council]. What then are such duties and powers according to the general usages of deliberative bodies? They comprise the duty and power to preserve order and decorum during the deliberations of the body. It is said to be the privilege of any member, and the special duty of the presiding officer, to take notice of any offense during deliberation, and to call the attention of the assembly to it. In such cases the president declares to the assembly that a member named is guilty of irregular or improper conduct, and specifies it. When it has been stated by the president, the member is entitled to be heard in exculpation.[61] * * * When the president has called an offending member to order, and stated the matter of the offense to the house, it seems that he has discharged his duty and exhausted his power in the premises. He thereby transmits the further disposition of the matter to the house. The power to punish is not among his prerogatives; that belongs exclusively to the house, and he can never exercise it save as it is expressly ordered by the house. If he has other powers, the fact has escaped the recognition of writers. * * * If noise or tumult in the house, breaches of good order and decorum in the course of proceeding, or an exhibition of disrespect and contempt for the president, would justify a forcible exclusion by him of an offending member, it can not be that the history of proceedings in deliberative bodies would furnish no instance of the assumption of such power."[62]

[60] Thompson v. Whipple, 54 Ark. 203; s. c. 15 S. W. 604.

[61] "Delicacy and custom require that he withdraw in order that the matter may be fully discussed and considered, free from any restraints of his presence. If a sense of propriety does not constrain him to withdraw, the house may order that he do so; but his failure to do it is a matter for the action of the house. If the member disregards its order, the president may enforce it. Thus far, and no farther, can we find that the president is authorized to order that a member be excluded:" Thompson v. Whipple, 54 Ark. 203; s. c. 15 S. W. 604.

[62] "It is said that the power of the speaker is well stated by Mr. Speaker Lenthall, who, when Charles I came into the house of commons and asked him whether any of five members that he came to apprehend were in the house, whether he saw them, and where they were, replied: 'May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place but as the house is pleased to direct, whose servant I

§ 222. Negligence of recorder of deeds.—Where a recorder of deeds is employed by the owner of land to make a search of title, he is not liable for an error to one who lends money on the faith of it and loses it, at least in the absence of knowledge that it was to be used for procuring a loan.[63] He is undoubtedly liable for damage resulting from an erroneous record of a conveyance, although it be the negligence of a deputy;[64] but who is entitled to sue, and the measure of damages, are often very nice and difficult questions; the decisions are conflicting, and depend more or less on the language of the statutes. While some courts hold that a grantee's title is valid, notwithstanding defective record, if he has filed his deed for record,[65] others decide that all persons may rely upon the record actually made, and that the negligence of the recorder is, in effect, imputed to the one who employed him, when the rights of third parties are concerned.[66]

am.'" Idem, p. 206. But it was conceded that the president might order an arrest to prevent an injury being done to another member without waiting for the action of the house, as that would be no more than any other person would be justified in doing anywhere: Idem, p. 207. Parsons v. Brainard, 17 Wend. (N. Y.) 522, was controlled by a New York statute, and is without force out of that state. It was there held that the presiding officer of a town meeting, with statute authority to maintain order, may make a valid order for the removal of a disorderly person, though no violence was threatened. A verdict for fifty cents damages was reversed.

[63] Day v. Reynolds, 23 Hun (N. Y.) 131. Cf. Savings Bank v. Ward, 100 U. S. 195, and the dissenting opinion.

[64] Van Schaick v. Sigel, 60 How. Pr. (N. Y.) 122.

[65] Merrick v. Wallace, 19 Ill. 486, 497; Polk v. Cosgrove, 4 Biss. 437; Riggs v. Boylan, 4 Biss. 445; Garrard v. Davis, 53 Mo. 322; Minis v. Minis, 35 Ala. 23.

[66] Frost v. Beekman, 1 Johns. Ch. (N. Y.) 285, 298; s. c. reversed, but not on this ground, Beekman v. Frost, 18 Johns. (N. Y.) 544; New York Life Ins. Co. v. White, 17 N. Y. 469; Chamberlain v. Bell, 7 Cal. 292; Shepherd v. Burkhalter, 13 Ga. 443; Miller v. Bradford, 12 Iowa 14; Brydon v. Campbell, 40 Md. 331; Barnard v. Campau, 29 Mich. 162; Parrett v. Shaubhut, 5 Minn. 323; Terrell v. Andrew Co., 44 Mo. 309; Hester's Lessee v. Fortner, 2 Binn. (Pa.) 40; Lally v. Holland, 1 Swan (Tenn.) 396; Jennings' Lessee v. Wood, 20 Ohio 261; Baldwin v. Marshall, 2 Humph. (Tenn.) 116; Sanger v. Craigue, 10 Vt. 555; Cooley Torts (2d ed.) 454; Throop Public Officers, § 742. On the question of proximate cause of an injury to a second grantee by reason of the negligence of the recorder combined with the fraudulent act of the grantor (a point which Judge Cooley leaves unsolved—Cooley Torts 455 456), cf. Beach Contrib. Neg. (2d ed.), § 32, p. 38, n. 3, and cases there cited, with Alexander v. Town of Newcastle, 115 Ind. 51; s. c. 17 N. E. 200, cited in Beach Contrib. Neg. (2d ed.), § 245, p. 325. And see Wharton Neg., § 134.

§ 223. The same subject continued.—Where the error consists in omitting to index or in indexing incorrectly, the decisions are also at variance. In some of them the index is deemed a mere collateral convenience for the benefit of the recorder, an error in which does not prejudice the grantee's title.[67] But where the statute requires the index to give information of the contents of the deed, the record is not constructive notice of anything which is not disclosed by the index.[68]

§ 224. Liability of assessor of taxes.—Tax assessors are not liable for innocent mistake when acting within the scope of their authority;[69] but they must be careful not to assume a jurisdiction which the law does not confer upon them: if they decide upon the rights of others in cases which the law has not confided to their judgment, they are liable to the same extent as if they possessed no official character whatever. In the leading case in New York it was held that an action could be maintained by a bank to recover a tax levied under an assessment upon its capital stock contrary to a statute which provided, instead, for the taxation of the stockholders. "The distinction," said Chief Justice Church, "is between an erroneous and an illegal assessment. The former is where the officers have power to act, but err in the exercise of the power; the latter where they have no power to act at all, and it does not aid them to decide that they have."[70] In assessing property not taxable, or in deciding erroneously as to a taxable inhabitant, they act ministerially and not

[67] Schell v. Stein, 76 Pa. St. 398; Bishop v. Schneider, 46 Mo. 472; s. c. 2 Am. R. 533; Commissioners &c. v. Babcock, 5 Or. 472; Curtis v. Lyman, 24 Vt. 338.

[68] Reeder v. State, 98 Ind. 114; Gwynn v. Turner, 18 Iowa 1; Breed v. Conley, 14 Iowa 269; Scoles v. Wilsey, 11 Iowa 261.

[69] National Bank &c. v. City of Elmira, 53 N. Y. 49; reversing s. c. 6 Lans. (N. Y.) 116; and reviewing the New York cases; Williams v. Weaver, 75 N. Y. 30; s. c. affirmed, 100 U. S. 547; Robinson v. Rowland, 26 Hun (N. Y.) 501; Ford v. McGregor, 20 Nev. 446; s. c. 23 Pac. 508; McDaniell v. Tebbetts, 60 N. H. 497; Cooley Taxation 553; Wilson v. Marsh, 34 Vt. 352; Odiorne v. Rand, 59 N. H. 504.

[70] National Bank &c. v. City of Elmira, 53 N. Y. 49; rev'g s. c. 6 Lans. (N. Y.) 116; Dorn v. Backer, 61 N. Y. 261; reversing s. c. 61 Barb. (N. Y.) 597; Hilton v. Fonda, 86 N. Y. 339. See also, Mygatt v. Washburn, 15 N. Y. 316; Whitney v. Thomas, 23 N. Y. 281; Chegaray v. Jenkins, 5 N. Y. 376; Weaver v. Devendorf, 3 Denio (N. Y.) 117; Prosser v. Secor, 5 Barb. (N. Y.) 607; Swift v. City of Poughkeepsie, 37 N. Y. 511; Haley v. Whitney, 53 Hun (N. Y.) 119; s. c. 6 N. Y. S. 342. It was said in Apgar v. Hayward, 110 N. Y. 225; s. c. 18 N. E. 85, that if assessors had no jurisdiction to make a certain increase which they did make, they would not be liable for property taken to pay the tax, but only for the difference between the correct and erroneous tax.

judicially.[71] On the other hand, if they have jurisdiction both of the person taxed and of the subject-matter, there is no individual liability, however erroneous or unequal the tax may be, provided they act in good faith.[72] Thus where the statute required an assessment upon the market value of certain shares of stock, and it was made upon the par value, there was no remedy against the assessors.[73] It was held in New York that an assessor, in determining the value of property, is protected irrespective of motive;[74] but it is believed that the prevailing rule makes him liable for a malicious overestimate.[75]

[71] Ford v. McGregor, 20 Nev. 446; s. c. 23 Pac. 508.

[72] Williams v. Weaver, 75 N. Y. 30; s. c. affirmed, 100 U. S. 547; Ballerino v. Mason, 83 Cal. 447; s. c. 23 Pac. 530, quoting from Chief Justice Taney's opinion in Kendall v. Stokes, 3 How. 87, 98; Apgar v. Hayward, 110 N. Y. 225; s. c. 18 N. E. 85.

[73] Williams v. Weaver, 75 N. Y. 30; s. c. affirmed, 100 U. S. 547. See also, an excellent case, Robinson v. Rowland, 26 Hun (N. Y.) 501.

[74] Weaver v. Devendorf, 3 Denio (N. Y.) 117. But see Apgar v. Hayward, 110 N. Y. 225, 232; s. c. 18 N. E. 85.

[75] Parkinson v. Parker, 48 Iowa 667, 669; Ballerino v. Mason, 83 Cal. 447; s. c. 23 Pac. 530, where, however, the court held that an averment that the defendant "wilfully and against law" assessed property too high was not an allegation of malice or of intent to wrong or injure the owner. They are exempt by statute in Massachusetts except for want of integrity (Pub. Stat. of Mass., p. 113, § 94); but formerly in that state the rule was more severe than that adopted elsewhere: Gage v. Currier, 4 Pick. (Mass.) 399; Taft v. Wood, 14 Pick. (Mass.) 362; Little v. Merrill, 10 Pick. (Mass.) 543. Assessors are not liable for an unintentional omission to tax a person, whereby he loses his vote: Griffin v. Rising, 11 Met. (Mass.) 339.

CHAPTER VIII.

THE LIABILITY OF THE CORPORATION FOR THE ACTS OF ITS OFFICERS AND AGENTS.

SECTION

225. Introductory.
226. Liability ex contractu—Requirements for valid contracts.
227. Contracts within scope of powers of corporation.
228. The same subject continued.
229. The doctrine of ultra vires applied with greater strictness to public than to private corporations.
230. The reason for the rule.
231. Municipal bonds void when ultra vires.
232. The same subject continued.
233. Ultra vires—How modified by estoppel.
234. The same subject continued—Hitchcock v. Galveston.
235. Irregularity in exercise of power.
236. Ultra vires—How modified by the doctrine of implied contract—General principles.
237. The same subject continued.
238. Illustrations of the doctrine of implied contracts.
239. The same subject continued.
240. Liability of the corporation to repay taxes illegally collected.
241. The same subject continued—Restrictions.
242. Illegality of assessment.
243. Actual receipt of taxes by the corporation.
244. Compulsory payment of taxes.
245. The same subject continued.
246. Illustrations of the rule.
247. The same subject continued.
248. The doctrine of the federal supreme court considered.
249. The same subject continued.
250. Contracts within the scope of powers of officer or agent.
251. The same subject continued—Clark v. Des Moines.
252. All persons contracting with strictly public corporations charged with knowledge of scope of powers of officer or agent.
253. The same subject continued.
254. Liability of corporation for act of its officers or agents in violation of law.
255. The same subject continued.
256. Effect of representation of officer or agent as to authority.
257. The same subject continued.
258. Ratification of contracts.
259. The same subject continued.
260. Ratification by authorized officers necessary.
261. Manner of ratification.
262. Manner of execution of contracts by officers and agents.
263. The same subject continued.
264. Contracts by ordinance or resolution.
265. Signature of contract.
266. The same subject continued.
267. Liability ex delicto—(a) In general.
268. (b) Discretionary and legislative acts.
269. (c) The same subject continued.

SECTION
270. (d) Ministerial acts.
271. (e) Public as contradistinguished from private duties.
272. The rule applied to public quasi-corporations.
273. Conclusion.

§ 225. Introductory.—A municipal corporation, like other corporations, can of course act only through its agents. Every liability of such a corporation is in a sense a liability for the acts of its officers or agents. A more detailed statement of the different classes of liabilities incident to municipal corporations will be found in the subsequent chapters of this work. It is the writer's purpose in this chapter to consider the liability of the corporation for the acts of its officers and agents with special reference to the powers and authority of those agents, and the extent to which the municipality is bound by those acts. The liability of the corporation is naturally considered under two heads: every liability is either a liability ex contractu or a liability ex delicto; in other words, the act of the officer or agent by which the municipality is sought to be bound is claimed to be either a contract or a tort. The principles governing these two classes of liability, though similar in many respects, differ materially in others; and in considering any specific question of liability we must first inquire whether that liability arises from contract or from tort, before we attempt to decide whether the corporation is bound by the acts of its officer or agent.

§ 226. Liability ex contractu—Requirements for valid contracts.—A municipal corporation is liable, just as is a private corporation or a natural free person, upon contracts properly assumed by the corporation. There may be said to be three requirements necessary for a valid and enforceable contract by a municipal corporation. In the first place the contract must be within the scope of the powers of the corporation; that is to say, the corporation must be authorized, either expressly or impliedly by its charter or other statute by virtue of which it has come into existence, to make such a contract. In the second place the contract must be made by the proper officers or agents. The officers or agents through whom the corporation acts in assuming the contract liability must be within the authorized scope of their powers in making the contract on behalf of the municipality. Finally, if the manner in which the municipal corporation must make its contracts is expressly and imperatively prescribed by mandatory statutes, the contract must be made according to the manner prescribed by law in order to be valid.[1] If these requirements are ob-

[1] See post, ch. 18, where these different requirements are discussed in detail.

served the municipal corporation is liable to private persons upon its contracts to the same extent as a private corporation or a natural person. The constitutional prohibition of laws impairing the obligation of contracts applies in favor of private creditors of the municipality, whether they be corporations or persons, maintaining inviolable the rights of these creditors against any subsequent legislation.[2]

§ 227. Contracts within scope of powers of corporation.—The municipal corporation being an artificial person and deriving its existence and power to act solely from the express or implied provisions of its charter or other creating statute, it can not make a valid contract which is wholly beyond the scope of its powers. Consequently no officer or agent can make a binding contract on behalf of the municipal corporation, if such contract is wholly beyond the express or implied powers of the corporation.[3] It now seems well-

[2] Wolff v. New Orleans, 103 U. S. 358; Meriwether v. Garrett, 102 U. S. 472. The proposition in the text is of course conceded learning, and it is needless to quote in this connection more of the great number of cases which establish the doctrine.

[3] Daviess Co. v. Dickinson, 117 U. S. 657; s. c. 6 S. Ct. 897; Hayes v. Holly Springs, 114 U. S. 120; s. c. 5 S. Ct. 785; Lewis v. City of Shreveport, 108 U. S. 282; s. c. 2 S. Ct. 634; East Oakland Tp. v. Skinner, 94 U. S. 255; Marsh v. Fulton Co., 10 Wall. 676; Thomas v. City of Richmond, 12 Wall. 349; City of Leavenworth v. Rankin, 2 Kan. 358; Bogart v. Lamotte Tp., 79 Mich. 294; s. c. 44 N. W. 612; Rens v. City of Grand Rapids, 73 Mich. 237; s. c. 41 N. W. 263; Newbery v. Fox, 37 Minn. 141; s. c. 33 N. W. 333; 5 Am. St. 830; Burchfield v. City of New Orleans, 42 La. An. 235; s. c. 7 So. 448; Gurley v. City of New Orleans, 41 La. An. 75; s. c. 5 So. 659; Laycock v. City of Baton Rouge, 35 La. An. 475; Seibrecht v. City of New Orleans, 12 La. An. 496; Spaulding v. City of Lowell, 23 Pick. (Mass.) 71; Loker v. Inhabitants &c., 13 Pick. (Mass.) 343; Mayor &c. v. Musgrave, 48 Md. 272; Stidger v. City of Red Oak, 64 Iowa 465; s. c. 20 N. W. 762; State v. Bevers, 86 N. C. 588; City of Fort Wayne v. Lehr, 88 Ind. 62; Covington &c. R. Co. v. Mayor &c., 85 Ga. 367; s. c. 11 S. E. 663; City of Eufaula v. McNab, 67 Ala. 588; New Jersey &c. Co. v. Fire Com'rs, 34 N. J. Eq. 117; Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442; Miners Ditch Co. v. Zellerbach, 37 Cal. 543; Agawam Bank v. Inhabitants &c., 128 Mass. 503; Atlantic City &c. Co. v. Read, 50 N. J. L. 665; s. c. 15 Atl. 10; Prince v. City of Quincy, 105 Ill. 138; Trustees &c. v. Hohn, 82 Ky. 1; City of Cleveland v. State Bank &c., 16 Ohio St. 236; Shipman v. State, 42 Wis. 377, 381; Syracuse W. Co. v. City of Syracuse, 116 N. Y. 167; s. c. 22 N. E. 381; Lyddy v. Long Island City, 104 N. Y. 218; s. c. 10 N. E. 155; Moore v. Mayor &c., 73 N. Y. 238; McDonald v. Mayor &c., 68 N. Y. 23; Buffett v. Troy &c. R. Co., 40 N. Y. 168; Donovan v. Mayor &c., 33 N. Y. 291; Mayor &c. v. Cunliff, 2 N. Y. 165; Halstead v. Mayor &c., 3 N. Y. 430; Appeal of Whelen, 108 Pa. St. 162; Earley's Appeal, 103 Pa. St. 273; Maupin v. Franklin Co., 67 Mo. 327; Cheeney v. Inhabitants &c., 60 Mo. 53; City of Bridgeport v. Hous-

established law that where the contract is properly ultra vires,—that is to say, where it is wholly beyond the express or implied powers of the corporation,—it is absolutely void, and can not be ratified by performance or by acceptance of benefit thereunder. As is said in a recent California case, neither the doctrine of estoppel or of ratification nor of bona fide holding can be invoked to support such a contract.[4]

§ 228. **The same subject continued.**—There is, however, much conflict in the cases bearing on this point. The great preponderance of authority is undoubtedly in favor of the doctrine of our text, but in many cases the judges seem to have allowed their desire to prevent the defeat of substantial justice by the interposition of the technical defense of ultra vires to obscure their judgment in deciding the legal rights of the parties. Thus, in a case in which the city of St. Louis sued to recover upon a contract, which the court acknowledged to be void, but under which the defendant had enjoyed benefits, it was held that the defendant was estopped from impeaching the validity of the contract. The decision was also placed upon the doubtful ground that a contract made by a municipal corporation, although ultra vires, was yet not illegal if not prohibited by its charter; and that while the corporation might successfully set up the plea of ultra vires if sued upon such a contract, still the party contracting with the corporation could not set up that plea against the corporation after receiving and retaining benefits under the contract. The decision may be justified on the ground of estoppel under the particular facts of the case; but the general doctrine laid down that a city may recover upon an ultra vires contract unless such contract is expressly prohibited by law, is certainly dangerously broad. The concluding sentence of the decision seems to indicate the real ground of the decision: "In ruling thus we give no sanction to a municipal corporation leaving the narrow pathway marked out by its charter, nor do we intimate that we would enforce an ultra vires contract if execu-

atonic R. Co., 15 Conn. 475; Clark v. City of Des Moines, 19 Iowa 199; Lincoln v. Inhabitants &c., 75 Maine 141; Mitchell v. City of Rockland, 45 Maine 496; Driftwood &c. Co. v. Board &c., 72 Ind. 226. The cases above cited are but a few of a great number which support the proposition of the text. The writer has endeavored to cite the leading and recent cases in the different states, by consulting which other authorities in the reports of that state may be ascertained.

[4] Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442. And this doctrine has the high authority of Judge Dillon: 1 Dillon Munic. Corp., § 457; 2 Dillon Munic. Corp., § 935. See cases cited in preceding note.

tory; we merely hold that good morals and even-handed justice demand that the defendant should disgorge."[5]

§ 229. The doctrine of ultra vires applied with greater strictness to public than to private corporations.—In a Minnesota case,[6] a contract for grading the streets was made by the officers of a town in the first instance, although the charter required that the duty to make the improvement should be first imposed upon the adjacent proprietors. In a well-considered opinion the contract was adjudged ultra vires and void. The court said: "The doctrine of ultra vires has with good reason been applied with greater strictness to municipal bodies than to private corporations, and in general a municipality is not estopped from denying the validity of a contract made by its officers when there has been no authority for making such a contract.[7] A different rule of law would in effect vastly enlarge the powers of public agents to bind a municipality by contracts not only unauthorized but prohibited by the law. It would tend to nullify the limitations and restrictions imposed with respect to the powers of such agents, and to a dangerous extent expose the public to the very evils and abuses which such limitations are designed to prevent."[8]

§ 230. The reason for the rule.—The reason for the stringent application of the doctrine of ultra vires to strictly public corporations is well stated by Judge Cooley: "The powers conferred upon municipalities must be considered with reference to the object of their creation, namely, as agencies of the state in local government. The state can create them for no other purpose, and it can confer powers of government to no other end, without at once coming into conflict with the constitutional maxim that legislative power can not be delegated, or with other maxims designed to confine all the agen-

[5] City of St. Louis v. Davidson, 102 Mo. 149; s. c. 14 S. W. 825; 22 Am. St. 764.

[6] Newbery v. Fox, 37 Minn. 141; s. c. 33 N. W. 333; 5 Am. St. 830.

[7] Citing Mayor v. Ray, 19 Wall. 468; Brady v. Mayor &c., 20 N. Y. 312; Hague v. City of Philadelphia, 48 Pa. St. 527; 1 Dillon Munic. Corp., § 457; Nash v. City of St. Paul, 8 Minn. 172. In Covington &c. R. Co. v. Mayor &c., 85 Ga. 367; s. c. 11 S. E. 663, it is decided that a contract entered into by a city outside of its powers and contrary to public policy is void, notwithstanding the fact that the city has received some benefits thereunder.

[8] See to the same effect, Burchfield v. City of New Orleans, 42 La. An. 235; s. c. 7 So. 448; Gurley v. City of New Orleans, 41 La. An. 75; s. c. 5 So. 659; Rens v. City of Grand Rapids, 73 Mich. 237; s. c. 41 N. W. 263; Bogart v. Lamotte Tp., 79 Mich. 294; s. c. 44 N. W. 612; Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442; and cases cited in preceding sections.

cies of government to the exercise of their proper functions; and wherever the municipality shall attempt to exercise powers not within the proper province of local self-government, whether the right to do so be claimed under express legislative grant or by implication from the charter, the act must be considered as altogether ultra vires and therefore void."[9]

§ 231. **Municipal bonds void when ultra vires.**—An interesting instance of the application of the preceding doctrines is found in a California case already cited.[10] The legislature of that state authorized the board of supervisors of the county of San Luis Obispo to issue bonds "not exceeding in the aggregate the sum of forty thousand dollars" for the purpose of erecting a court-house. By some means bonds to the amount of forty-two thousand dollars were issued. Under the California statutes such bonds could be legal only by virtue of the express authority of the legislature. The court held that the action of the supervisors in issuing the bonds in excess of forty thousand dollars did not bind the county, as the county had no power to issue bonds without legislative sanction; that the bonds were absolutely void. "It is quite probable," said the opinion of the court, "that the respondents paid full par value for these bonds and that they will lose their money," but "those who contract with a municipal corporation are bound to know the extent of the power of its officers.[11] Respondents would have discovered the worthlessness of the bonds upon the slightest inquiry. At all events, hard cases can not be allowed to make bad law. An overissue of twenty thousand dollars would have been no less valid than the overissue of two thousand dollars, and any other rule would put the people of a county in the complete power of careless or unscrupulous public officers."[12]

§ 232. **The same subject continued.**—The supreme court of the United States has, however, decided, where municipal bonds are by

[9] Cooley Const. Lim. (6th ed.) 261. And Judge Dillon says:—"The history of the workings of municipal bodies has demonstrated the salutary nature of this principle, and that it is the part of true wisdom to keep the corporate wings clipped down to the lawful standard:" 1 Dillon Munic. Corp., § 457.

[10] Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442.

[11] Citing Wallace v. Mayor &c., 29 Cal. 180.

[12] Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442, 445. In the same case the board of supervisors attempted to correct their error by ordering the bonds to be redeemed. The court very justly held this to be brutum fulmen, saying:—"The character of one void act of public officers can not be changed by a second void act of the same officers declaring the first act to be valid."

virtue of misrepresentations contained in the bonds themselves apparently valid, and are sold to bona fide purchasers, and the purchase price received and appropriated by the city, that the city is liable to the purchasers for the price paid for the bonds upon an implied contract to restore money illegally obtained.[13] But the doctrine of the case cited in the preceding section[14] has often been sustained, and under the circumstances of the individual case it has been decided in several instances in Massachusetts that the holders of void municipal bonds were without remedy.[15]

§ 233. Ultra vires—How modified by estoppel.—The foregoing principles are to be applied cautiously, however; and it does not always follow from the fact that the municipality has undertaken an ultra vires act, that the other contracting party is without remedy for the corporation's default. As has been before indicated, the courts are reluctant to apply the hard doctrine of ultra vires, and have to some extent used the same expedients to evade that doctrine which have in the case of private corporations so far restricted its application. The doctrine of estoppel is frequently invoked against the plea of ultra vires. Thus, to use the words of Judge Dillon, "where an act in its external aspect is within the general powers of the corporation, and is only unauthorized because it is done with a secret unauthorized intent, the defense of ultra vires will not prevail against a stranger who in good faith dealt with it without notice of such intent."[16]

§ 234. The same subject continued—Hitchcock v. Galveston.—A notable instance is to be found in a case in the federal supreme

[13] Louisiana v. Wood, 102 U. S. 294. So also, in a Wisconsin case, the same doctrine was upheld, and it was also decided that it was not necessary under those circumstances for the holders to offer to return the bonds before bringing action: Paul v. City of Kenosha, 22 Wis. 266.

[14] Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442.

[15] Agawam Nat'l Bank v. Inhabitants &c., 128 Mass. 503; Railroad Nat'l Bank v. City of Lowell, 109 Mass. 214. See chapter on Bonds and Coupons, post. It will be noticed that the supreme court of the United States is more lenient towards bona-fide holders for value of irregular or void bonds than are the state courts —possibly because the federal tribunal feels less keenly the local dangers of allowing careless or unscrupulous public officers to trifle with the financial obligations of the corporations whose servants they are, and consequently is more at liberty to exercise the natural feeling of pity for the bondholders who have become the victims of that carelessness or unscrupulousness.

[16] 2 Dillon Munic. Corp., § 936; citing 5 Am. L. Rev. (Jan. 1871) 272, which, says the distinguished author, sums up the result of the English cases to that date substantially in the language of the text.

court,[17] where the city of Galveston contracted with certain parties to pave its streets. This was within the scope of the powers of the corporation, but a clause in the contract provided for the issue of negotiable municipal bonds in payment for the contract, which was ultra vires the corporation. The contractors proceeded with the work, and when partially completed brought action against the city on the contract. The plea of ultra vires was set up and sustained in the trial court, but overruled in the supreme court. The grounds of the decision were stated by Mr. Justice Strong as follows: "They [the plaintiff contractors] are not suing upon the bonds, and it is not necessary for their success that they should assert the validity of those instruments. It is enough for them that the city council have power to enter into a contract for the improvement of the sidewalks; that such a contract was made with them; that under it they have proceeded to furnish materials and do work as well as assume liabilities; that the city has received and now enjoys the benefit of what they have done and furnished; that for these things the city promised to pay, and that after receiving the benefit of the contract the city has broken it. It matters not that the promise was to pay in a manner not authorized by law. If payments can not be made in bonds because their issue is ultra vires, it would be sanctioning rank injustice to hold that payment need not be made at all. Such is not the law. The contract between the parties is in force, so far as it is lawful. There may be a difference between the case of an engagement made by a corporation to do an act expressly prohibited by its charter or some other law and a case of where legislative power to do the act has not been granted. Such a distinction is asserted in some decisions. But the present is not a case in which the issue of bonds was prohibited by any statute. At most the issue was unauthorized; at most there was a defect of power. The promise to give bonds to the plaintiffs in payment of what they undertook to do was therefore at furthest only ultra vires; and in such a case, though specific performance of an engagement to do a thing transgressive of its corporate power may not be enforced, the corporation can be held liable on its contract. Having received benefits at the expense of the other contracting party, it can not object that it was not empowered to perform what it promised in return in the mode in which it promised to perform. This was directly ruled in The State Board of Agriculture v. The Citizens Street Railway Company.[18] There it was held that 'although there may be a defect of

[17] Hitchcock v. Galveston, 96 U. S. 341.

[18] 47 Ind. 407.

power in a corporation to make a contract, yet if a contract made by it is not in violation of its charter or of any statute prohibiting it, and the corporation has by its promise induced a party, relying on the promise and in execution of the contract, to expend money and perform his part thereof, the corporation is liable on the contract.' "[19]

§ 235. **Irregularity in exercise of power.**—And in pursuance of the same policy the courts have held that where the officers of the municipal corporation enter into contract which is within the scope of the powers of the corporation, but do so in an irregular manner, the corporation is estopped from setting up ultra vires against one who has contracted in good faith.[20] And in an Illinois case it was decided that where a municipal corporation enters upon a contract in reliance upon a power which it is subsequently discovered not to possess, it will not be relieved of its obligation if that obligation can be satisfied by the exercise of a power which it lawfully possesses.[21]

§ 236. **Ultra vires—How modified by the doctrine of implied contract—General principles.**—The elementary principle that the law presumes a contract to restore to the rightful owner property obtained through fraud or mistake is applied to municipal corporations with effects that greatly modify and ameliorate the doctrine of ultra vires. "This doctrine of implied municipal liability applies to cases where money or other property of a party is received under such circumstances that the general law, independent of express contract, imposes the obligation upon the city to do justice with respect to the

[19] Hitchcock v. Galveston, 96 U. S. 341; citing Alleghany City v. McClurkin, 14 Pa. St. 81; Maher v. City of Chicago, 38 Ill. 266; Oneida Bank v. Ontario Bank, 21 N. Y. 490; Argenti v. San Francisco, 16 Cal. 255; Silver Lake Bank v. North, 4 Johns. Ch. (N. Y.) 370. The decision of the lower court in this case (Hitchcock v. Galveston) was supported, in the opinion of the court, by Tensas &c. Jury v. Britton, 15 Wall. 566, and Mayor &c. v. Ray, 19 Wall. 468, where it was held that a municipality has inherently no implied power to issue bonds. But in the Galveston case the liability of the city was based upon the contract, and the court did not decide the question of the validity of the bonds. The arguments of the opinion quoted in the text were considered applicable even if the bonds were conceded to be illegal and void. It will be noted that the conclusions of this case are close in principle to City of St. Louis v. Davidson, 102 Mo. 149; s. c. 14 S. W. 825, already cited and considered. See to the same effect, East St. Louis v. East St. Louis Gas &c. Co., 98 Ill. 415.

[20] Moore v. Mayor &c., 73 N. Y. 238.

[21] Maher v. City of Chicago, 38 Ill. 266.

same."[22] These words of Chief Justice Field indicate the great breadth and vagueness of the doctrine and the consequent great difficulty in its application to individuals. There are few subjects in the law of public corporations in which it is more difficult to lay down general principles from the adjudications. The general principle of the liability of corporations on an implied contract, where the law presumes a contract to restore money or property obtained by mistake or without authority of law, is supported by a vast number of authorities.[23] The difficulty is to determine under what circumstances the general rule applies.

§ 237. **The same subject continued.**—The law must be determined from the circumstances of each case, and generalities will be little more than indications of the trend of the decisions. The result of this state of things is that which always follows when the law is in the breast of each judge. There is great and irreconcilable conflict in the cases. A few general rules are laid down, however, by Chief Justice Field which may be studied with advantage. "If the city obtain money of another by mistake or without authority of law, it is her duty to refund it—not from any contract entered into by her on the subject, but from the general obligation to do justice which binds all persons, whether natural or artificial. If the city obtain other property which does not belong to her it is her duty to restore it; or, if used by her, to refund an equivalent to the true owner from the like general obligation; the law, which always intends justice, implies a promise. In reference to money or other property, it is not difficult to determine in any particular case whether a liability with respect to the same has attached to the city. The money must have gone into her treasury or been appropriated by her; and when it is property other than money it must have been used by her or be under her control. But with reference to services rendered the

[22] Argenti v. City of San Francisco, 16 Cal. 255.

[23] Chapman v. Douglass Co., 107 U. S. 348; s. c. 2 S. Ct. 62; Louisiana v. Wood, 102 U. S. 294; Mayor &c. v. Ray, 19 Wall. 468; President &c. (Bank) v. Dandridge, 12 Wheat. 64, 74; Hitchcock v. Galveston, 96 U. S. 341; Albany City Nat'l Bank v. City of Albany, 92 N. Y. 363; Moore v. Mayor &c., 73 N. Y. 238; Peterson v. Mayor &c., 17 N. Y. 449; Bank v. Patterson, 7 Cranch 299; Taylor v. Lambertville, 43 N. J. Eq. 107; s. c. 10 Atl. 809; Board &c. v. Springfield, 63 Ill. 66; Town of Canaan v. Derush, 47 N. H. 212; State Board &c. v. Aberdeen, 56 Miss. 518; Herman v. City of Crete, 9 Neb. 350; s. c. 2 N. W. 722; District Tp. &c. v. District Tp. &c., 11 Iowa 506; Morville v. American Tract Society, 123 Mass. 129; Brown v. City of Atchison, 39 Kan. 37; s. c. 17 Pac. 465; City of Bryan v. Page, 51 Tex. 532; Town of Lemington v. Blodgett, 37 Vt. 215; Magill v. Kauffman, 4 S. & R. (Pa.) 317.

case is different. Then acceptance must be evidenced by ordinance to that effect. If not originally authorized, no liability can attach upon any ground of implied contract. The acceptance upon which alone the obligation to pay could arise would be wanting. As a general rule, undoubtedly a city corporation is only liable upon express contracts authorized by ordinance. The exceptions relate to liabilities from the use of money or other property which does not belong to her or to liabilities springing from the neglect of duties imposed by the charter from which injuries to parties are produced. There are limitations even to these exceptions in many instances; as, where money or property is received in disregard of positive prohibitions; as, for example, the city would not be liable for moneys received upon the issuance of bills of credit, as this would be in effect to support a proceeding in direct contravention of the inhibition of the charter."[24]

§ 238. Illustrations of the doctrine of implied contracts.—In an Illinois case the municipal corporation was bound by its charter to support its paupers. An action was brought by a person who had furnished necessaries to a pauper, after having applied to the municipal authorities for relief, which was refused. The city was held liable under an implied contract to remunerate the person who had thus performed what was the duty of the city.[25] The cases in which said doctrine is more frequently applied arise where the city has obtained through mistake or fraud money or other property, and an implied contract to return the property thus obtained is presumed by the law. So in a famous series of California cases, known as the "City Slip Cases," where the municipal officers conveyed real estate by virtue of an ordinance which was void, it was held that the sales were absolutely void; that no title passed to the supposed purchasers, and that the corporation was liable in an action brought by them to recover the purchase-money, although that money had already been appropriated for municipal purposes.[26]

[24] Argenti v. City of San Francisco, 16 Cal. 255.

[25] Seagraves v. Alton, 13 Ill. 366. In the opinion it was said by the court:—"In the present case the evidence tended to the conclusion that Reeves was a pauper and properly chargeable to the corporation. It also clearly appeared that the plaintiff, with whom Reeves resided, made repeated applications to the city authorities for relief, which was refused. If Reeves was a pauper in fact, the plaintiff by continuing to maintain him pursued the course that humanity prompted and the law approved, and he ought to be remunerated."

[26] Pimental v. San Francisco, 21 Cal. 351; Grogan v. San Francisco,

§ 239. The same subject continued.—In an interesting case in the federal supreme court a Nebraska county purchased certain lands for a poor farm, and paid for the same partly in cash and partly in promissory notes. It was subsequently decided by the state courts that the promissory notes were ultra vires and void. Suit was brought that the sum due on account of the purchase price should be paid or that the county should reconvey the lands. The supreme court held that the contract was void only so far as the mode of payment was concerned, and that the county was liable for the balance due on account of the purchase price, and decreed that that balance should be paid within a reasonable time or the property reconveyed to the rightful owners.[27] The courts have frequently decided, in accordance with the maxim that "he who seeks equity must do equity," that a municipal corporation which seeks to be relieved from a contract must, if it has received benefits under that contract, restore the benefits it has received before its prayer will be granted.[28]

§ 240. Liability of the corporation to repay taxes illegally collected.—A liability on an implied contract arises under proper circumstances where the municipal corporation has collected and received illegal taxes. The principles upon which this liability is based are clearly the same as those which have been discussed in the preceding sections. The law presumes a contract on the part of the corporation to repay the taxes to the rightful owner, if the conditions are such that the municipality has not equitably a right to retain the money collected as taxes.[29] The money thus received is

18 Cal. 590; McCracken v. San Francisco, 16 Cal. 591. In a New York case sewers were furnished under an unauthorized contract. The courts held that the contractor could not recover on the express contract, but indicated in a dictum that "if, as alleged, the city has obtained his property without authority, but has used and received the avails of it, it would seem that independently of the express contract an implied contract would arise to make compensation:" Nelson v. Mayor &c., 63 N. Y. 535.

[27] Chapman v. Douglass Co., 107 U. S. 348; s. c. 2 S. Ct. 62.

[28] Turner v. Cruzen, 70 Iowa 202; s. c. 30 N. W. 483; Lucas v. Hunt, 5 Ohio St. 488. The difficult subject of implied contracts will be more fully discussed in the chapter on Contracts. As has been indicated, the cases are conflicting, and it is perhaps impossible to lay down general rules on the subject to which many exceptions are not to be found.

[29] National Bank &c. v. Elmira, 53 N. Y. 49; Bank &c. v. Mayor &c., 43 N. Y. 184; Grand Rapids v. Blakely, 40 Mich. 367; Tuttle v. Everett, 51 Miss. 27; Douglasville v. Jones, 62 Ga. 423; Lamborn v. County Com'rs, 97 U. S. 181; Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541; Phelps v. Mayor &c., 112 N. Y. 216; s. c. 19 N. E. 408; Ege v. Koontz, 3 Pa. St. 109; Town of Princeton v. Vierling, 40 Ind. 340; Riker v. Jersey City, 38 N. J. L. 225; Haines v.

considered in law to be money had and received for the rightful owners, the taxpayers, and can be recovered by them in an action in assumpsit on this common-law liability independently of the statutory provisions on the subject that are in force in several of the states.

§ 241. The same subject continued—Restrictions.—It is manifest, however, that a loose application of the doctrine enunciated in the preceding section would be fraught with grave damage to the corporation. If the town, city or other strictly public corporation could be held liable to repay all taxes irregularly collected, even if paid voluntarily, it is evident that great public inconvenience would ensue. Such a condition of things would afford unlimited opportunity to demagogues to appeal to the natural avarice of mankind. Actions would be brought to recover taxes, necessary and legal in their essentials, but collected irregularly or by virtue of legislation in which some technical defect could be found. The administration of government would be seriously impeded, and the just and equitable principle of the common law would be distorted into an instrument of injustice. The courts have therefore wisely hedged about the application of the doctrine with stringent rules. These rules are stated by Judge Dillon with his usual succinctness and clearness: "Actions against a municipal corporation to recover back money upon the ground of the illegality of the tax or assessment are upon principle and the weight of authority maintainable when, and in general only when (if there be no statute enlarging the liability), the following requisites coexist: 1. The authority to levy the tax or to levy it upon the property in question must be wholly wanting, or the tax itself wholly unauthorized, in which case the assessment is not simply

School Dist., 41 Maine 246; Cook v. City of Boston, 9 Allen (Mass.) 393. The liability of the corporation for the repayment of taxes illegally collected exists under the proper conditions at common law independent of statute, and has been recognized by the supreme court of the United States. "Where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal without an immediate and urgent necessity therefor, or unless to release his person or property from detention or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary, and can not be recovered back. And the fact that the party at the time of making the payment files a written protest does not make the payment involuntary. But where a party not liable to taxation is called upon peremptorily to pay upon such a warrant, and he can save himself and his property in no other way than by paying the illegal demand, he may give notice that he so pays it by duress and not voluntarily, and by showing that he is not liable recover it back as money had and received:" Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541; cited and quoted in 2 Dillon Munic. Corp., § 947.

irregular but absolutely void. 2. The money sued for must have been actually received by the defendant corporation and received by it for its own use and not as an agent or instrument to assess and collect money for the benefit of the state or other public corporation or person. And 3. The payment by the plaintiff must have been made upon compulsion; as, for example, to prevent the immediate seizure of his goods or the arrest of the person, and not voluntarily. Unless these conditions concur, paying under protest will not, without statutory aid, give a right of recovery."[30]

§ **242. Illegality of assessment.**—According to the first rule laid down in the preceding section, the assessment must be absolutely void and not merely irregular in order to justify a recovery by the taxpayer of the money paid in as taxes. Thus, where property exempt by law from taxation is illegally taxed, the assessment is void and the money may be recovered.[31] And in accordance with this principle it has been held in several cases that where the corporation levies an assessment upon property for street improvement and the like, and the assessment is void in law, the sum paid under the assessment can be recovered.[32] This rule is also applied when the corporation levies an assessment and afterwards fails to carry out the improvement for which the assessment was levied.[33] In conformity with the general policy of the law in restricting the application of the doctrine under consideration, it is conceded learning that the assessment is considered prima facie valid, and the burden of proof of its illegality is thrown upon the person attempting to recover money paid under that assessment.[34]

§ **243. Actual receipt of taxes by the corporation.**—The second restrictive rule prescribed by Judge Dillon is well illustrated in a Massachusetts case. The taxpayers of a town paid a sum of money under a void assessment in order to build a schoolhouse. This money was paid by the treasurer of the town to a building committee

[30] 2 Dillon Munic. Corp., § 940.

[31] City of Indianapolis v. McAvoy, 86 Ind. 587.

[32] Taylor v. People, 66 Ill. 322; Bradford v. City of Chicago, 25 Ill. 411; Diefenthaler v. Mayor &c., 111 N. Y. 331; s. c. 19 N. E. 48; Peyser v. Mayor &c., 70 N. Y. 497; Mayor &c. v. O'Callaghan, 41 N. J. L. 349. But it is held in a New York case that when the assessment is made under an ordinance which is void on its face, the payment of the assessment, being a mere mistake of law, is not such a payment as to justify a recovery: Phelps v. Mayor &c., 112 N. Y. 216; s. c. 19 N. E. 408.

[33] Bradford v. City of Chicago, 25 Ill. 411; Valentine v. City of St. Paul, 34 Minn. 446; s. c. 26 N. W. 457.

[34] Town of Douglasville v. Johns, 62 Ga. 423; and cases cited in preceding sections.

of the school district. A taxpayer brought action against the school district and recovered his proportionate share of the money from the school district, although the town had levied the assessment.[35] It is indeed obvious where the corporation exercises only a naked agency, and pays over the money collected to a third person, natural or artificial, that the actual beneficiary is liable in an action brought to recover the money so paid. This principle is, however, applied with discretion, and the money must be actually paid over to the third person before the corporation can claim exemption under the rule. Thus, where the city of Grand Rapids illegally collected a tax for street improvement, and an action was brought to recover the money so paid, it was claimed by the defendant that the fund was not for city use and that the city was not therefore liable. The court held very properly that the plea was untenable, saying: "Where the party entitled demands restoration, it is no answer for the city to say it holds the funds for somebody else."[36]

§ **244. Compulsory payment of taxes.**—In order to justify a recovery by the taxpayer, it is not only necessary that the assessment be void and that the corporation actually receive the money, but it is also necessary that the payment be made involuntarily and under compulsion. It is by the application of this rule that these actions are, if unsuccessful, generally defeated, and consequently there are a great number of cases regulating and defining the application of the rule. There is considerable variety and some actual conflict in the cases on this subject. It is, however, upon the whole, well settled that the payment must be made under direct and immediate compulsion, and under such circumstances that the person called upon to pay the tax can save himself or his property only by paying the illegal demand.[37] The stringent application of this rule often results in

[35] Joyner v. Inhabitants &c., 3 Cush. (Mass.) 567.

[36] City of Grand Rapids v. Blakely, 40 Mich. 367.

[37] Union Pac. R. Co. v. Commissioners &c., 98 U. S. 541. In this case the rule is laid down by Chief Justice Waite as in the text. The language of the rule is taken from the decision of Chief Justice Shaw in Preston v. City of Boston, 12 Pick. (Mass.) 7, 14, which is cited and approved by Chief Justice Waite in his opinion. See also, Lamborn v. County Com'rs &c., 97 U. S. 181. It is believed that the doctrine of the text is also supported by the following cases: Galveston City Co. v. City of Galveston, 56 Tex. 486; Town of Princeton v. Vierling, 40 Ind. 340; Commissioners &c. v. National Land Co., 23 Kan. 196; Kansas &c. R. Co. v. Commissioners &c., 16 Kan. 587; Detroit v. Martin, 34 Mich. 170; Bank &c. v. City of New Orleans, 12 La. An. 421; Robinson v. City Council &c., 2 Rich. L. (S. C.) 317; Leonard v. City of Canton, 35 Miss. 189; Raisler v. Mayor &c., 66 Ala. 194; Clarke v. Dutcher, 9 Cow.

hardship in individual cases, but, for the reasons already stated, the general beneficence of the rule is undoubted.

§ **245. The same subject continued.**—Under the rule just laid down, it will be seen that it is necessary for the payment to be made under compulsion. Therefore, if the payment be voluntary, and made only through ignorance of law, and not through mistake of fact, the money so paid can not be recovered even if it was paid under an illegal assessment.[38] There is some conflict in the cases on the question as to what constitutes such compulsion as is necessary in order to recover money paid for illegal taxes. The supreme court of the United States has taken a rather extreme position on this point, as appears by a case already cited, in which an illegal assessment had been laid upon certain real estate of a railroad company, and a tax warrant had been issued for the collection of the tax; but the warrant had not actually been levied, nor had any property actually been seized to satisfy the tax. Under these circumstances the company paid the tax under protest. The court did not consider this payment to have been made under the compulsion which the law requires as a prerequisite to the bringing of an action to recover the money so paid.[39] Chief Justice Waite seems to have rested this decision on the ground that it was absolutely necessary for the payment to have been made under such circumstances that the taxpayer could have saved himself in no other way than by paying the illegal demand. "The real question in this case is," he says, "whether there was such an immediate and urgent necessity for the payment of the taxes in controversy as to imply that they were made under compulsion."[40]

§ **246. Illustrations of the rule.**—The hard doctrine of the federal supreme court is in accordance with the decisions of some of the

(N. Y.) 674; City of Muscatine v. Keokuk &c. Co., 45 Iowa 185; Falls v. City of Cairo, 58 Ill. 403; Harrison v. City of Milwaukee, 49 Wis. 247; s. c. 5 N. W. 326; Mayor &c. v. Judah, 5 Leigh (Va.) 305; Phelps v. Mayor &c., 112 N. Y. 216; s. c. 19 N. E. 408; Diefenthaler v. Mayor &c., 111 N. Y. 331; s. c. 19 N. E. 48; Bank &c. v. Mayor &c., 43 N. Y. 184; Bucknall v. Story, 46 Cal. 589; Emery v. City of Lowell, 127 Mass. 138; Benson v. Monroe, 7 Cush. (Mass.) 125; Churchman v. City of Indianapolis, 110 Ind. 259; s. c. 11 N. E. 301; McCrickart v. City of Pittsburgh, 88 Pa. St. 133; Taylor v. Board &c., 31 Pa. St. 73.

[38] Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541; Emery v. City of Lowell, 127 Mass. 138; Mayor &c. v. Judah, 5 Leigh (Va.) 305; Bank &c. v. Mayor &c., 43 N. Y. 184; Falls v. City of Cairo, 58 Ill. 403. See also, cases cited in preceding section.

[39] Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541.

[40] Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541.

states, but its rigor is modified in others. Thus, in a Michigan case, an assessment was laid upon real estate under an unconstitutional statute, and the land was to be sold to satisfy the tax. In order to avoid the threatened sale the owner paid the tax under protest. Even under these circumstances the payment was considered voluntary, and the right of the owner to recover the tax money was denied on the ground that as the law was unconstitutional and void the sale would also have been void, and would not therefore have disturbed the owner's title.[41] As has already been indicated, it is held in many cases that some overt act towards collecting the tax must have been taken before the tax can be considered to have been paid under such compulsion as the law requires. The mere issuing of a tax warrant or the mere threat to collect the tax does not, according to these authorities, create the compulsion required by law.[42]

§ **247. The same subject continued.**—As an instance of a less rigorous application of the rule may be cited an Iowa case, where the owner of real estate paid without protest the first instalment of an illegal assessment. His right to recover the money thus paid was affirmed by the court on the ground that no protest was required by the ordinance.[43] And in the same state money paid under protest for illegal taxes is considered as paid under compulsion, although no active steps were taken to enforce the payment of the tax.[44] In Mississippi it has been held that if the legislation imposing the tax is void, and if the tax has been paid to the officer who appeared to be authorized to collect it, the money can be recovered, even if paid

[41] Detroit v. Martin, 34 Mich. 170. See also, to the same effect, Falls v. City of Cairo, 58 Ill. 403; Lee v. Templeton, 13 Gray (Mass.) 476; Kansas &c. R. Co. v. Commissioners &c., 16 Kan. 587. In Lamborn v. Commissioners &c., 97 U. S. 181, the rule of the text is upheld. The court said:—"If the legality of the tax is merely doubtful, and the validity of the sale would depend upon its legality according to the law of Kansas, the party, if he chooses to waive the other remedies given him by law to test the validity of the tax, must take his risk either voluntarily to pay the tax and thus avoid the question, or to let his land be sold at the hazard of losing it if the tax should be sustained. Having a knowledge of all the facts it is held that he must be presumed to know the law, and in the absence of any fraud or better knowledge on the part of the officer receiving payment, he can not recover back money paid under such a mistake."

[42] Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541; Morris v. Baltimore, 5 Gill (Md.) 244; and cases cited in preceding section.

[43] Robinson v. Burlington, 50 Iowa 240. See also, Ruggles v. City of Fond du Lac, 53 Wis. 436; s. c. 10 N. W. 565.

[44] Thomas v. City of Burlington, 69 Iowa 140; s. c. 28 N. W. 480.

without protest.[45] The Kentucky rule seems to hold that money paid under mistake of law, as well as of fact, can be recovered.[46]

§ 248. The doctrine of the federal supreme court considered.—To the mind of the writer, the rule laid down in the Union Pacific Railroad case[47] seems unnecessarily harsh. With all deference to the great ability of that court, and especially to the clear and forcible intelligence of the justice who delivered the opinion in the case under consideration, it would seem that all the useful objects of the rule which prescribes that the compulsory payment of illegal taxes is an essential requisite to the maintaining an action to recover the money so paid would be attained by a less rigorous construction of that rule. It is difficult to perceive why it should be necessary for the taxpayer to wait supinely until active steps are taken to collect the tax before attempting to save his rights by paying under protest the sum demanded, and then testing in the courts the validity of the legislation purporting to impose the tax. Nor, in the opinion of the writer, does the decision of Chief Justice Shaw in Preston v. City of Boston,[48] warrant the conclusion drawn therefrom by Chief Justice Waite. In the Massachusetts case it was said: "Where a party not liable to taxation is called upon peremptorily to pay upon such a warrant, and he can save himself and his property in no other way than by paying the illegal demand, he may give notice that he so pays it by duress and not voluntarily, and by showing that he is not liable, recover it back as money had and received." Says Chief Justice Waite, after quoting this passage: "This, we think, is the true rule, but it falls far short of what is required in this case." In the Union Pacific Railroad case, a warrant had been issued to the treasurer of the county, in the nature of an execution running against the property of the parties charged with taxes. By virtue of this warrant the treasurer was authorized to seize and sell the goods of the company to satisfy the tax. It is to be noted also that the railroad company had had no opportunity of testing in court the validity of the tax act. Under these conditions the company paid

[45] Tuttle v. Everett, 51 Miss. 27.

[46] Louisville v. Henning, 1 Bush (Ky.) 381. This broad proposition is, however, clearly opposed to the great weight of authority in the federal and state courts, which conclusively establish the rule that money, if paid under mistake of fact may be recovered, but if paid without compulsion under mere mistake of law can not be recovered by the taxpayer in an action in assumpsit on the implied contract: Lamborn v. Commissioners &c., 97 U. S. 181; Benson v. Monroe, 7 Cush. (Mass.) 125; Bucknall v. Story, 46 Cal. 589; Clarke v. Dutcher, 9 Cow. (N. Y.) 674.

[47] Union Pacific R. Co. v. Commissioners &c., 98 U. S. 541.

[48] 12 Pick. (Mass.) 7, 14.

the amount of the taxes to the treasurer under a general protest, and with notice that suit would be commenced to recover back the full amount that was paid. The company certainly seems to have done everything that prudence and respect for the laws could have dictated, unless it was necessary for it to wait until the treasurer had actually seized its property. There can be no reason why its inaction should have been carried to that point. To allow its property to be so seized would have caused great inconvenience to the company and to the public, and it can not be the policy of the law to require such useless and detrimental delay on its part.

§ 249. The same subject continued.—Moreover, the action of the company seems to have brought it within the letter and the spirit of the rule as laid down by Chief Justice Shaw, of Massachusetts. The issuing of the warrant, it may fairly be said, placed the railroad company in such a position that it could save itself and its property in no other way than by paying the illegal demand. By its protest it gave notice that it so paid the demand by duress and not voluntarily, and by showing that it was not liable it was entitled to recover the amount paid by it as money had and received. These considerations are strengthened by the fact that "there is a strong tendency in the later cases, both English and American, to give relief where justice requires it, against a common mistake of law, although there may be no element of actual fraud."[49] This tendency is in the direction of modifying the hidebound rules of the common law and adapting them to the natural and equitable principles of justice dictated by reason. It is believed by the writer that the rigorous application in the Union Pacific Railroad case of a rule the general wisdom of which is undoubted defeats the very objects of that rule, and, by requiring of taxpayers an unreasonable and useless delay, stimulates them to evade the operation of the statutes, which the rule is intended to support.

§ 250. Contracts within the scope of powers of officer or agent.—As has already been indicated, the contract must not only be within

[49] Dillon Munic. Corp., § 945, n., ad finem; citing 1 Spence Equity 632, 633; Bispham Equity, §§ 185–188; Story Equity Juris., § 212a, written by Judge Redfield; Cooper v. Phibbs, L. R. 2 H. L. 149; s. c. 17 Irish Ch. R. 73, 79 (noting luminous judgment of Lord Westbury drawing a distinction between a mistake of the general law of the land and one relating to a matter of private right, the latter being considered as a matter of fact rather than of law); Stone v. Godfrey, 5 De G., M. & G. 76; In re Saxon Life Assurance Soc., 2 J. & H. 408; In re Condon, L. R. 9 Ch. App. 609.

the scope of the powers of the corporation, but it must be within the scope of the powers of the officer or agent by whom the contract is made on behalf of the corporation. In other words, the contract, in order to be valid, must not only be a contract which the corporation is authorized expressly or impliedly by its charter or by other legislation to make, but the officer or agent who makes the contract for the corporation must be properly authorized to make the contract. The rule that the doctrine of ultra vires is more stringently applied in the case of strictly public than in private corporations finds its application in this class of contracts as well as in those contracts when the question arises whether the contract is ultra vires the corporation. We have seen that the rule is in force in the case of contracts which are without the scope of the powers of the corporation itself.[50] In conformity to the principle underlying the rule, the actual powers of public officers or agents are more closely scrutinized than are the powers of agents of private corporations; and acts within the apparent scope of the powers of public agents, but actually without those powers, are frequently held invalid, when in the case of the agents of a private corporation the contrary view would be held by the courts. In general it may be said that the contract of a public officer or agent, if beyond the actual scope of his powers, will not bind the corporation unless the officer is authorized by the corporation to represent himself as duly empowered to make the contract.[51] The city is liable for acts of officers who are engaged within the scope of their duties, and the fact that the public may be benefited does not make it a public function.[52] Officers who derive their authority from the city charter, while acting within the scope of their authority, render the city liable for their acts.[53]

§ 251. The same subject continued—Clark v. Des Moines.—An excellent illustration of the rule is found in an Iowa case,[53a] where action was brought upon warrants or orders of the city of Des Moines by an innocent assignee of those warrants or orders. It appeared that the charter granted no express or implied power to the officers who undertook to execute the warrants to issue negotiable paper in

[50] See ante, § 229 et seq.

[51] Clark v. City of Des Moines, 19 Iowa 199; s. c. 87 Am. D. 423, and cases there cited; Sutro v. Pettit, 74 Cal. 332; s. c. 16 Pac. 7; 5 Am. St. 442; Newbery v. Fox, 37 Minn. 141; s. c. 33 N. W. 333; 5 Am. St. 830; Louisville &c. R. Co. v. Louisville, 8 Bush (Ky.) 415; Mayor &c. v. Musgrave, 48 Md. 272. See also, cases cited in succeeding section.

[52] Missano v. Mayor &c., 160 N. Y. 123; s. c. 54 N. E. 744.

[53] Platt v. City of Waterbury, 72 Conn. 531; s. c. 45 Atl. 154.

[53a] Clark v. City of Des Moines, 19 Iowa 199; s. c. 87 Am. D. 423.

the name and on behalf of the corporation. It was held that these warrants were negotiable paper, but that they were void ab initio from the want of power on the part of the officers to issue the paper; that the bona fide holders of the warrants were bound at their peril to ascertain the nature and extent of the powers of the officer and of the city; and that the fact that these warrants were in the hands of innocent bona fide holders for value could not validate them. An opinion is delivered by Judge Dillon, who lays down the fundamental principles with his usual perspicuity and force: "The general principle of law is well known and definitely settled that the agents, officers, or even city council, of a municipal corporation can not bind the corporation when they transcend their lawful and legitimate powers. This doctrine rests upon this reasonable ground: The body corporate is constituted of all the inhabitants within the corporate limits. The inhabitants are the corporators. The officers of the corporation, including the legislative or governing body, are merely the public agents of the corporators. Their duties and powers are prescribed by statute. Every one, therefore, may know the nature of these duties and the extent of these powers. These considerations, as well as the dangerous nature of the opposite doctrine, demonstrate the reasonableness and necessity of the rule that the corporation is bound only when its agents, by whom from the very necessities of its being it must act, if it acts at all, keep within the limits of their authority. Not only so, but such a corporation may successfully interpose the plea of ultra vires; that is, set up as a defense its own want of power under its charter or constituent statute to enter into a given contract or to do a given act in violation or excess of its corporate power and authority."[54]

[54] See also, Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; Halstead v. Mayor, 3 N. Y. 430; Martin v. Mayor, 1 Hill (N. Y.) 545; Boom v. City of Utica, 2 Barb. (N. Y.) 104; Cornell v. Town of Guilford, 1 Denio (N. Y.) 510; Boyland v. Mayor &c., 1 Sandf. (N. Y.) 27. It is observed by the distinguished judge that the cases asserting these principles are numerous and uniform, and that some of the more important ones need only be cited; Mayor &c. v. Cunliff, 2 N. Y. 165; Cuyler v. Trustees &c., 12 Wend. (N. Y.) 165; Dill v. Inhabitants &c., 7 Met. (Mass.) 438; Vincent v. Inhabitants &c., 12 Cush. (Mass.) 103; Stetson v. Kempton, 13 Mass. 272; s. c. 7 Am. D. 145; Parsons v. Inhabitants &c., 11 Pick. (Mass.) 396; Hood v. Mayor &c., 1 Allen (Mass.) 103; Spaulding v. City of Lowell, 23 Pick. (Mass.) 71; Mitchell v. City of Rockland, 45 Maine 496; s. c. 66 Am. D. 252; Anthony v. Inhabitants &c., 1 Met. (Mass.) 284; Western College v. City of Cleveland, 12 Ohio St. 375; Board &c. v. Cox, 6 Ind. 403; Inhabitants &c. v. Weir, 9 Ind. 224; Smead v. Indianapolis &c. R. Co. 11 Ind. 104; Brady v. Mayor, 20 N. Y. 312; Appleby v. Mayor, 15 How. Pr. (N. Y.) 428; Estep v. Keokuk Co.,

§ 252. All persons contracting with strictly public corporations charged with knowledge of scope of powers of officer or agent.—Since the powers of public officers and agents are defined either by the charter or other constituent act, and since these statutes are open to public inspection and "afford to every person the certain means of ascertaining the authority of these officers,"[55] "it is fundamental," says Judge Folger, "that those seeking to deal with a municipal corporation, through its officials, must take great care to learn the nature and extent of their power and authority."[56]

18 Iowa 199, and cases cited by Cole, J.; Clark v. Polk Co., 19 Iowa 248.

[55] Clark v. City of Des Moines, 19 Iowa 199; s. c. 87 Am. D. 423.

[56] McDonald v. Mayor &c., 68 N. Y. 23; s. c. 23 Am. R. 144; citing Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; Cornell v. Town of Guilford, 1 Denio (N. Y.) 510; Savings Bank v. Inhabitants &c., 8 Allen (Mass.) 109. In McDonald v. Mayor &c., supra, the plaintiff sued for the value of materials furnished the city of New York. The defense set up was that plaintiff had failed to comply with statutory regulations providing that the necessity for such materials should be certified to by the head of the department of public works and the expenditure therefor authorized by the common council; and further providing that the materials should be furnished upon sealed bids or proposals made in compliance with public notice advertised. The defense was supported by the court under the circumstances of the case. Judge Folger's opinion is valuable: —"It is plain," says he, "that if the restrictions put upon municipalities by the legislature for the purpose of reducing and limiting the incurring of debt and the expenditure of the public money may be removed upon the doctrine now contended for (that is, that the defendant, having appropriated the materials of the plaintiff and used them, is bound to deal justly and pay him the value of them), there is no legislative remedy for the evils of municipal government which of late have excited so much attention and painful foreboding. Restrictions and inhibitions by statute are practically of no avail if they can be brought to naught by the unauthorized action of every official of lowest degree, acquiesced in or not repudiated by his superiors. Donovan v. Mayor &c., 33 N. Y. 291, seems to be an authority in point, though the exact question now presented was not considered. And incidental remarks of Denio, J., in Peterson v. Mayor &c., 17 N. Y. 449, are to the same import. And see Peck v. Burr, 10 N. Y. 294. The views here set forth are not to be extended beyond the facts of the case. It may be that where a municipality has come into the possession of the money or the property of a person without his voluntary intentional action concurring therein, the law will fix a liability and imply a promise to repay or return it. Thus money paid by mistake, money collected for an illegal tax or assessment, property taken and used by an official as that of the city when not so—in such cases it may be that the statute will not act as an inhibition. The statute may not be carried further than its intention, certainly not further than its letter. Its purpose is to forbid and prevent the making of contracts by unauthorized official agents for sup-

§ 253. **The same subject continued.**—The rule of the preceding section is conceded learning in its general sense. There is, however, difficulty in its application to individual cases. This difficulty lies in deciding to what extent the rule is modified by the doctrine of estoppel, of implied contracts, and of ratification. It may be safely stated, however, that when the authority of the agent is statutory, and therefore a matter of record, the rule is strictly applied.[57] Now in general the intention of the legislature in imposing the statutory restrictions on the power of the public officer must be considered, and it is a cardinal question whether the abrogation of the restrictions in the particular case under consideration will defeat the general intention of the legislation. In other words, in the opinion of the writer, the question will generally be best determined by ascertaining whether the particular case at bar is of such a nature that a decision in favor of the contracting party will invalidate the precautions imposed by the legislature. If so, the restriction should be enforced; if, on the other hand, the case is such that a decision in favor of the plaintiff will not affect the general policy of the charter or other legislation as evidenced by the restrictions therein defined,

plies for the use of the corporation. This opinion goes no further than to hold that where a person makes a contract with the city of New York for supplies to it without the requirements of the charter being observed, he may not recover the value thereof upon an implied liability."

[57] Clark v. City of Des Moines, 19 Iowa 199; s. c. 87 Am. D. 423; Delafield v. Illinois, 2 Hill (N. Y.) 159, 174; Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; Supervisors v. Bates, 17 N. Y. 242; Overseers &c. v. Overseers &c., 15 N. Y. 341; Butterfield v. Inhabitants &c., 6 Allen (Mass.) 187; Rossire v. City of Boston, 4 Allen (Mass.) 57; Zabriskie v. Cleveland &c. R. Co., 23 How. 381; Chemung Bank v. Supervisors, 5 Denio (N. Y.) 517; Mayor &c. v. Eschbach, 18 Md. 276; Mayor &c. v. Reynolds, 20 Md. 1; Marsh v. Fulton Co., 10 Wall. 676; Hague v. City of Philadelphia, 48 Pa. St. 527; Head v. Providence Ins. Co., 2 Cranch 127; White v. City of New Orleans, 15 La. An. 667; Dey v. Mayor &c., 19 N. J. Eq. 412; Butler v. City of Charleston, 7 Gray (Mass.) 12; Bladen v. Philadelphia, 60 Pa. St. 464; Bonesteel v. Mayor &c., 22 N. Y. 162; Mayor &c. v. Cunliff, 2 N. Y. 165; Halstead v. Mayor, 3 N. Y. 430; Martin v. Mayor, 1 Hill (N. Y.) 545; Boom v. City of Utica, 2 Barb. (N. Y.) 104; Cornell v. Town of Guilford, 1 Denio (N. Y.) 510; Appleby v. Mayor &c., 15 How. Pr. (N. Y.) 428; McSpedon v. Mayor &c., 7 Bosw. (N. Y.) 601; Donovan v. Mayor &c., 33 N. Y. 291; Smith v. Mayor &c., 10 N. Y. 504; Miners' Ditch Co. v. Zellerbach, 37 Cal. 543; Trustees &c. v. Hohn, 82 Ky. 1. See also, cases cited in preceding sections. For many of the authorities cited in this note the writer is indebted to the exhaustive brief of D. J. Dean, Esq., assistant counsel to the corporation of the city of New York, in McDonald v. Mayor &c., 68 N. Y. 23; s. c. 23 Am. R. 144.

and will also satisfy the natural laws of justice and equity, then the corporation may be safely held liable.[58]

§ 254. Liability of corporation for act of its officers or agents in violation of law.—A contract made by the officers or agents of a public corporation in contravention of express law is, of course, void, and the corporation can not be held liable therefor.[59] Thus, where a contract was made by individual members of the common council of a municipal corporation in a manner not authorized by its charter, in disregard of the forms therein directed to be observed in the mak-

[58] This rule is not, so far as the writer has ascertained, definitely laid down in the cases. It is, however, shadowed forth in many of the opinions, and it is believed that the best-considered decisions fall within its scope.

[59] Fox v. City of New Orleans, 12 La. An. 154, where the action was brought upon an alleged contract between the plaintiff and defendant. This contract was for filling in certain city lots. The statute providing that all contracts for public or other work ordered by the municipality should be let out to the lowest bidder at auction was disregarded, and the court held that the contract was void, saying:—"No action can be maintained upon a contract made in violation of law. If by overriding this statute municipal officers could saddle the city with the expenses of the contracts they choose to make in defiance of its mandates, the taxpayers would become an easy prey to the jobbing contracts which it was the commendable object of the statute to defeat;" citing Fox v. Sloo, 10 La. An. 11. See also, Seibrecht v. City of New Orleans, 12 La. An. 496, where it is said in the vernacular of the civil law:—"Corporations possess only jura minorum. They have not the power of contracting on all subjects like persons of full age and sui juris. Respublica minorum jure solet, ideo que auxilium, restitutionis implorare potest. Code, Const. 4, liber 2, tit. 54; Ibid., Const. 3, liber 11, tit. 29; Ibid., Const. 4, liber 11, tit. 31." "A contract made by a corporation which is expressly prohibited by statute is so far void that the corporation can not maintain an action upon a contract even though the statute does not in terms declare that such a contract shall be void, but merely prescribes a penalty for making it. Whenever the legislature prohibits an act, or declares that it shall be unlawful to perform it, every rule of interpretation must say that the legislature intended to interpose its power to prevent the act, and as one of the means of its prevention that the courts shall hold it void. This is as manifest as if the statute had declared that it should be void. That the legislature imposes by a subsequent section of the act a penalty for the violation of the law does not in the remotest degree legalize or give validity to the contract. It but shows that the general assembly intended to adopt such measures as should compel the observance of the law:" Cincinnati &c. Assurance Co. v. Rosenthal, 55 Ill. 85. See also, to the same effect: Morgan v. Menzies, 60 Cal. 341; Zottman v. City of San Francisco, 20 Cal. 96; City of Indianapolis v. Indianapolis Gas &c. Co., 66 Ind. 396; Mayor &c. v. Bowman, 39 Miss. 671; McDonald v. Mayor &c., 68 N. Y. 23; s. c. 23 Am. R. 144; Thomas v. City of Richmond, 12 Wall. 349.

ing of its contracts, it was decided that such a contract was not the ground of any claim against the corporation; and where the charter required the contract to be made by the common council, a contract made by a special committee of that body was adjudged to be primarily invalid, and it was further decided that no subsequent action of the common council could confer validity upon it.[60]

§ **255. The same subject continued.**—The doctrine of the preceding section is so clearly and positively established that attempts have been made by the courts so to extend it as to validate contracts which, although beyond the scope of the powers of a public corporation, are yet not positively prohibited by its charter or other legislation. Thus, in a Missouri case already mentioned, a contract was made by the city of St. Louis for the services of prisoners in its workhouse to a private person. The charter of the city provided that all persons in the city workhouse should "work for the city at such labor as his or her strength will permit, within or without said workhouse, or other place, not exceeding ten hours each working day, and for such work the person so employed shall be allowed, exclusive of his or her board, fifty cents per day for each day's work" on account of the fine and costs imposed upon the prisoner. This statutory provision clearly did not allow, even if it did not prohibit, the hiring out of the workhouse prisoners to private persons. The court held, however, that the contract, though ultra vires, was not absolutely void, and that the city could recover upon a bond given by a contractor to the city to secure the performance of a contract upon his part, saying in the opinion: "It will be observed that the charter of the city, while it does not permit, yet does not prohibit, the making of such a contract as the one before us; so that although the contract is ultra vires the corporation, yet it is not illegal because not prohibited by the charter. This is a distinction clearly marked out by the authorities."[61]

§ **256. Effect of representation of officer or agent as to authority.**—The general rule is well settled that since parties dealing with municipal corporations are charged with knowledge of the extent of the powers of the officers and agents of these corporations, therefore a contract beyond the scope of the powers of the officer or agent is not to be enforced against the principal corporation.[62] But to this rule there are exceptions due to the application

[60] Zottman v. City of San Francisco, 20 Cal. 96; City of Leavenworth v. Rankin, 2 Kan. 357.

[61] City of St. Louis v. Davidson, 102 Mo. 149; s. c. 14 S. W. 825; 22 Am. St. 764.

[62] See ante, §§ 252, 253, and cases there cited. In United States v.

of the rules of estoppel. Thus, where the public officer or agent is charged with the sole duty of ascertaining whether a condition precedent to the issuing of municipal bonds has been performed, the recital in the bond that such condition precedent has been performed will estop the corporation from setting up the defense of non-performance of the condition precedent against an innocent purchaser for value of the bonds.[63]

§ 257. The same subject continued.—The decisions on the rule stated in the last sentence arise chiefly in deciding the validity of municipal or public bonds, and will be fully discussed in a subsequent chapter.[64] For the present it is sufficient to quote the rule as laid down in the supreme court of the United States: "When legislative authority has been given to a municipality or to its officers to subscribe for the stock of a railroad company and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a bona fide purchaser, is conclusive

City Bank of Columbus, 21 How. 356, the cashier of the defendant corporation wrote a letter stating that the bearer was authorized to contract on behalf of the bank for the transfer of money from the east to the south or the west for the federal government. Acting upon this letter the then secretary of the treasury, Hon. Thomas Corwin, delivered to the bearer a draft to be transferred to New Orleans for $100,000, which the bearer cashed, but the proceeds of which he did not transfer or account for. The United States brought action against the City Bank of Columbus to recover the sum advanced as aforesaid upon the authorization of the cashier of the bank. It was held that the act was entirely beyond the scope of the power of the cashier; that his representation concerning the power of the bearer did not bind the bank, and that consequently the plaintiff could not recover. "We think the safe rule," said Mr. Justice Wayne, "in all instances of acts done by the officers of corporate companies or by those who have the management of their business from which contracts are alleged to have been made, is to test that fact by an inquiry into the corporate ability that has been given them and to their subordinate officers or which the directors of the company can confer upon the latter to act for them."

[63] Oregon v. Jennings, 119 U. S. 74; s. c. 7 S. Ct. 124; Anderson County Com'rs v. Beal, 113 U. S. 227; s. c. 5 S. Ct. 433; Northern Bank &c. v. Porter Tp. Trustees, 110 U. S. 608; s. c. 4 S. Ct. 254; Town of Coloma v. Eaves, 92 U. S. 484.

[64] See the chapter on Bonds and Coupons.

of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."[65]

§ 258. **Ratification of contracts.**—A most important distinction exists between the two classes of ultra vires contracts of public corporations that we have just considered. The distinction is in respect of the power of the corporation to ratify by subsequent acquiescence, active or passive, the unauthorized contract. If the contract be wholly beyond the scope of the powers of the corporation it is void ab initio, and no subsequent acquiescence can validate it.[66] Like a still-born child, it lacks any element of life that may be fostered into active force. This strict rule is based on the general principles which determine the validity or invalidity of ultra vires municipal contracts. Ratification is a species of estoppel, and as the contracts we are considering are absolutely void, no principles of estoppel will be allowed to control.

§ 259. **The same subject continued.**—If, on the other hand, the contract itself be within the scope of the powers of the corporation, but be unauthorized only because the officer or agent, while not forbidden by the law to make the contract, was not properly authorized to do so, in that case the contract may be ratified and validated by subsequent assent of the corporation.[67] Thus, in a Kansas case, one

[65] Town of Coloma v. Eaves, 92 U. S. 484. In the opinion in that case, Mr. Justice Strong refers to the statement by Judge Dillon of this rule in his work on Municipal Corporations (1 Dillon Munic. Corp., § 523), and gives the rule in the words quoted in the text as a restatement of Judge Dillon's proposition.

[66] Lewis v. City of Shreveport, 108 U. S. 282; s. c. 2 S. Ct. 634; Smith v. City of Newburgh, 77 N. Y. 130; McDonald v. Mayor &c., 68 N. Y. 23; Brady v. Mayor &c., 20 N. Y. 312; Marsh v. Fulton Co., 10 Wall. 676; City of Shawneetown v. Baker, 85 Ill. 563; Hague v. City of Philadelphia, 48 Pa. St. 527; Parsons v. Inhabitants &c., 70 Maine 262; Bank v. Town of Statesville, 84 N. C. 169. See ante, §§ 227, 228, and cases cited. An examination of the cases will show that the rule of the text applies both to cases where the act is from its nature entirely beyond the charter powers, express or implied, of the corporation, and also to cases where the officer or agent acted wholly beyond his statutory authority in making the contract, so that the act of the officer or agent is virtually in contravention of the law.

[67] Bank &c. v. Patterson, 7 Cranch 299; Supervisors &c. v. Schenck, 5 Wall. 772; Moore v. City of Albany, 92 N. Y. 396; Albany &c. Bank v. City of Albany, 92 N. Y. 363; Brady v. Mayor &c., 20 N. Y. 312; Backman v. Charlestown, 42 N. H. 125; City of Shawneetown v. Baker, 85 Ill. 563; Brown v. Winterport, 79 Maine 305; s. c. 9 Atl. 844; People v. Common Council &c., 28 Mich. 228; Dubuque Female Col-

member of a school board made a contract for the building of a schoolhouse. This contract was a perfectly proper one in its nature, but was unauthorized because made by only one member of the board. The full school board afterwards accepted the contract, which was thereby ratified and validated.[68]

§ 260. **Ratification by authorized officers necessary.**—It is obvious that the officer or officers who undertake to ratify an unauthorized contract must possess an authority which in the beginning would have enabled them properly to make the original contract in behalf of the corporation.[69] In a leading case in New York this principle was forcibly enunciated. By a statute of the state of Illinois, certain officers or agents of the state were authorized to borrow money for public use, and for that purpose to sell its bonds or public stocks at not less than their par value. These officers sold the bonds at par, to be paid for in future instalments without interest, while the bonds drew interest from the time of sale. This was held to be a sale below par, and therefore unauthorized and invalid. It was contended by the bondholders that the act of the governor in signing the bonds with knowledge of the terms of sale operated as a ratification of the sale. On this point the court said: "We are now brought to the inquiry whether the contracts have been ratified so as to be obligatory upon the state of Illinois. I felt some difficulty on the question upon the argument, but after reflecting upon it, I am unable to say that there has been a ratification. The appellant relies on the fact that the governor, after he knew of the first contract, signed the bonds and caused them to be delivered, and that some of the other public officers of the state acted under the contracts, drawing for money and receiving payments. But the difficulty is that the governor was no more than an agent for the state, and he as well as the commissioners acted under a limited authority; and the same remark is applicable to the auditor and other public officers. None of them

lege v. District Tp., 13 Iowa 555; Lamm v. Port Deposit &c. Assn., 49 Md. 233; Mills v. Gleason, 11 Wis. 470, 493; Chouteau v. City of Roxbury, 7 Gray (Mass.) 374; Sullivan v. School Dist., 39 Kan. 347; s. c. 18 Pac. 287; People v. Swift, 31 Cal. 26; Episcopal Society v. Dedham Episcopal Church, 1 Pick. (Mass.) 372; Topsham v. Rogers, 42 Vt. 189. This doctrine frequently finds its application in cases where unauthorized officers have made expenditure of public funds. A subsequent assent by the proper officials to such expenditure will, in the absence of express statutory prohibition, ratify the expenditure: See cases cited, supra.

[68] Sullivan v. School Dist., 39 Kan. 347; s. c. 18 Pac. 287.

[69] Delafield v. Illinois, 2 Hill (N. Y.) 159; Marsh v. Fulton Co., 10 Wall. 676; Hague v. City of Philadelphia, 48 Pa. St. 527.

had authority to make such contracts as these were; and if they could not make them originally they could not ratify them. Ratification must come from the principal—the state of Illinois."[70]

§ 261. **Manner of ratification.**—When a certain mode of execution of a contract is prescribed by statute, the act of ratification of an unauthorized contract must comply with the provisions of the statute regulating the manner of entering into the original contract.[71] This rule is, however, to be taken with the modification that if the statutory method of procedure be regarded as merely directory and not mandatory, then a different method of procedure may be allowed in the act of ratification.[72] Thus, where the council of the corporation is empowered by the charter to make certain contracts by ordinance, and the contract is made by resolution, the subsequent ratification must be by ordinance. The mere use by the corporation of unauthorized improvements, such as school buildings, does not amount to ratification, unless the circumstances are such that it would have been natural and proper to have refused such use, or unless it is proven that the use was after knowledge of the unauthorized character of the improvement.[73]

§ 262. **Manner of execution of contracts by officers and agents.**—Nothing is more certain, under the modern adjudications, than that the methods prescribed by charter or other statute must be observed by the corporation in entering into contracts, if these statutory provisions are mandatory and intended by the legislature to act as wise restrictions upon the power of the corporation to contract. If, then, there are mandatory and restrictive enactments requiring the corporation to contract only under certain formalities and conditions, then contracts made by the officers or agents of the corporation which are not executed according to those statutory requirements do not bind the

[70] Delafield v. Illinois, 2 Hill (N. Y.) 159, 175; citing People v. Phoenix Bank, 24 Wend. (N. Y.) 431.

[71] McCracken v. City of San Francisco, 16 Cal. 591; Cross v. Mayor &c., 18 N. J. Eq. 305; Town of Durango v. Pennington, 8 Colo. 257; s. c. 7 Pac. 14.

[72] Cory v. Somerset Freeholders, 44 N. J. L. 445; Brown v. Mayor &c., 63 N. Y. 239; People v. Swift, 31 Cal. 26; Cross v. Mayor &c., 18 N. J. Eq. 305; New Orleans v. Clark, 95 U. S. 644. It has been held in some cases that under the circumstances mentioned in the text, the subsequent ratification does not operate to validate the original contract, even though the ratification be by ordinance: See Newman v. Emporia, 32 Kan. 456; s. c. 4 Pac. 815, and cases cited.

[73] Wilson v. School Dist., 32 N. H. 118; Lane v. School Dist., 10 Met. (Mass.) 462; Davis v. School Dist., 24 Maine 349.

municipality.[74] But where the statutory provisions prescribing the mode of executing contracts are merely directory and are not intended to be restrictive of the powers of the corporation or its officers to contract, then a failure to comply with those provisions is not necessarily fatal.[75]

§ **263. The same subject continued.**—It is frequently provided by statute that all public contracts shall be in writing. This being a mandatory provision and restrictive of the power of the corporation to contract, it must be complied with, else the contract is invalid.[76] And the same rule applies in regard to contracts under seal. "The ancient rule of the common law that corporations could not bind themselves by a contract not under seal is no longer efficacious in this country."[77] In this connection it may be noted that by the pro-

[74] President &c. (Bank) v. Dandridge, 12 Wheat. 64; Smith v. City of Newburgh, 77 N. Y. 136; Brady v. Mayor etc., 20 N. Y. 312; Allen v. City of Galveston, 51 Tex. 302; City of Bryan v. Page, 51 Tex. 532; McBrian v. City of Grand Rapids, 56 Mich. 95; s. c. 22 N. W. 206; Argenti v. City of San Francisco, 16 Cal. 255; Los Angeles Gas Co. v. Toberman, 61 Cal. 199; Town of Durango v. Pennington, 8 Colo. 257; s. c. 7 Pac. 14; People v. Weber, 89 Ill. 347; Worthington v. City of Covington, 82 Ky. 265; Addis v. City of Pittsburgh, 85 Pa. St. 379; Keeney v. Jersey City, 47 N. J. L. 449; s. c. 1 Atl. 511; State v. City of Passaic, 41 N. J. L. 90; Seibrecht v. City of New Orleans, 12 La. An. 496; Mayor &c. v. Eschbach, 18 Md. 276; Taft v. Town of Pittsford, 28 Vt. 286; Fulton v. City of Lincoln, 9 Neb. 358; s. c. 20 N. W. 724; Hudson v. Mayor &c., 64 Ga. 286; City of Logansport v. Humphrey, 84 Ind. 467; Gates v. Hancock, 45 N. H. 528; Heidelberg v. San Francois Co., 100 Mo. 69; s. c. 12 S. W. 914; Niles Water Works v. Mayor &c., 59 Mich. 311; s. c. 26 N. W. 525; Wilhelm v. Cedar Co., 50 Iowa 254; Driftwood &c. Co. v. Board &c., 72 Ind. 226. The general principles enunciated in the text will be more fully illustrated in a subsequent portion of the work: See the chapter on Contracts.

[75] Kelley v. Mayor &c., 4 Hill (N. Y.) 263; 1 Dillon Munic. Corp., § 449, and cases cited.

[76] Starkey v. City of Minneapolis, 19 Minn. 203; McDonald v. Mayor &c., 68 N. Y. 23; Stewart v. Cambridge, 125 Mass. 102.

[77] 15 Am. & Eng. Encyc. of Law 1090, tit. Municipal Corporations; citing City of Alton v. Mulledy, 21 Ill. 76; Wade v. New Berne, 77 N. C. 460; City of Selma v. Mullen, 46 Ala. 411; Town of New Athens v. Thomas, 82 Ill. 259; Watson v. Bennett, 12 Barb. (N. Y.) 196; Bank &c. v. Patterson, 7 Cranch 299; Savings Bank v. Davis, 8 Conn. 191; Hamilton v. Newcastle &c. R. Co., 9 Ind. 359; Peterson v. Mayor &c., 17 N. Y. 449; Missouri River &c. R. Co. v. Commissioners &c., 12 Kan. 482; Fleckner v. President &c., 8 Wheat. 338; President &c. (Bank) v. Dandridge, 12 Wheat. 64; Christian Church v. Johnson, 53 Ind. 273; McCullough v. Talladega Ins. Co., 46 Ala. 376; Buckley v. Briggs, 30 Mo. 452; Whitford v. Laidler, 94 N. Y. 145; Sheffield School Tp. v. Andress, 56 Ind. 157; Merrick v. Burlington &c. Co., 11 Iowa 74;

visions of the Municipal Corporations Act of 1882, every English corporation shall continue to have a common seal,[78] and certain contracts are required to be made under the corporate seal.[79]

§ 264. Contracts by ordinance or resolution.—The city council being the agents of the corporation, the acts of that body, if intra vires and regular, are of course binding upon the corporation; and a contract made by ordinance or resolution of the council is, so far as regularity of execution is concerned, valid and binding in the absence of express statutory provisions regulating the mode of execution of corporate contracts.[80] Judge Story has said on this subject: "The acts of such a body or board, evidenced by a written vote, are as completely binding upon the corporation and as complete authority to their agents as the utmost solemn acts done under the corporate seal."[81] On the question whether such a contract is without the statute of frauds, there is doubt. A New York case approves the doctrine that a contract made by ordinance and duly entered on the official corporate minutes, which are signed by the clerk, is valid.[82] The decision in this case is at least tacitly approved by Judge Dillon,[83] and seems a reasonable adaptation of the law to modern

Trustees &c. v. Moody, 62 Ala. 389. See also, Draper v. Springport, 104 U. S. 501.

[78] Municipal Corporations Act of 1882, § 250, subd. 1.

[79] The appointment by a corporation of an attorney to conduct their suits or manage their affairs must be under the common seal, otherwise he can not recover against the corporation even though they had by resolution expressly directed the business to be done: Arnold v. Mayor &c., 4 Man. & G. 860; Sutton v. Spectacle Makers' Co., 10 L. T. (N. S.) 411. So, an agreement by a corporation with one of its officers for an increase of the salary of an office retained by him as compensation for the loss of another office of which he was deprived under the act of 1835, though upon an executed consideration, is not binding upon the corporation if not under the common seal: Reg. v. Mayor &c., 6 Q. B. 433. See also, Cope v. Thames Haven Dock & R. Co., 3 Exch. 841; Mayor &c. v. Hardwicke, L. R. 9 Ex. 13. It has, however, been held that an agreement for the use of a dock need not be under seal: Wells v. Mayor &c., L. R. 10 C. P. 402. See Rawlinson Municipal Corporations Act (8th ed. by Thomas Geary) 100, n.

[80] Fleckner v. President &c., 8 Wheat. 338; Over v. City of Greenfield, 107 Ind. 231; s. c. 5 N. E. 872; Ross v. City of Madison, 1 Ind. 281; People v. Board &c., 27 Cal. 655; Fanning v. Gregoire, 16 How. 524; Mayor &c. v. Jackson, 1 Doug. (Mich.) 106; Abby v. Billups, 35 Miss. 618; Clark v. Mayor &c., 12 Wheat. 40; Wade v. City of Newbern, 77 N. C. 460; San Antonio v. Lewis, 9 Tex. 69.

[81] Fleckner v. President &c., 8 Wheat. 338.

[82] Argus Co. v. Mayor &c., 55 N. Y. 495. See also, Duncombe v. City of Fort Dodge, 38 Iowa 281.

[83] Dillon Munic. Corp., § 449.

methods of corporate government when the business of the corporation is conducted by a council; but in a North Carolina case a contract made in a similar matter was declared obnoxious to the objection that it did not comply with the statute of frauds.[84]

§ **265. Signature of contract.**—It frequently happens that the officers or agents of municipal corporations in executing contracts on behalf of the corporation sign their individual names and affix their individual seals instead of using the corporate name and seal. The preponderance of American authorities seems to establish the rule that such contracts are valid and binding upon the corporation, if made by the proper officers and intra vires the corporation; but that they are valid and binding only as simple contracts, and that the seal of the individual officer or agent does not supply the place of the corporate seal.[85] There is some conflict of opinion, but it is believed that an examination of the cases will show this rule to be sustained in the United States.[86]

§ **266. The same subject continued.**—Notwithstanding the fact, however, that the rule of the preceding section prevails, it is far safer for municipal contracts to be signed and sealed by the proper officers with the corporate name and seal. Thus, in a leading New York case cited by Judge Dillon,[87] a contract relating to public matters was made between a committee appointed for that purpose by the city and a natural person. This contract purported to be "between . . . , a committee appointed by the corporation of the city of Albany for that purpose, of the first part, and . . . ,

[84] Wade v. City of Newbern, 77 N. C. 460.

[85] Parr v. President &c., 72 N. Y. 463; Randall v. Van Vechten, 19 Johns. (N. Y.) 60; Stanton v. Camp, 4 Barb. (N. Y.) 274; Heidelberg School Dist. v. Horst, 62 Pa. St. 301; Blanchard v. Inhabitants &c., 102 Mass. 343; Robinson v. City of St. Louis, 28 Mo. 488; Regents &c. v. Detroit &c. Soc., 12 Mich. 138; Bowen v. Morris, 2 Taunt. 374. But see contra, Bank &c. v. Patterson, 7 Cranch 299; Fulham v. Inhabitants &c., 9 Allen (Mass.) 1; City of Providence v. Miller, 11 R. I. 272; Ulam v. Boyd, 87 Pa. St. 477.

[86] See 1 Dillon Munic. Corp., § 452, where the learned author says:—"Where officers or agents of a corporation duly appointed and acting within the scope of their authority in executing an instrument in behalf of the corporation sign their own names and affix their own seals, such seals are simply nugatory, and the instrument, according to the weight of modern judicial opinion, is to be regarded as the simple contract of the corporation and will bind the corporation, and not the individuals executing it, where the purpose to act for the corporation is manifest from the whole paper and where there are no words evincing an intention to assume a personal liability."

[87] 1 Dillon Munic. Corp., § 453.

of the second part," and was signed and sealed with the individual names and seals of the persons composing the committee. The court decreed the enforcement of the contract against the corporation, as being a public contract.[88] But in Pennsylvania under very similar circumstances the committeemen were made personally liable.[89]

§ 267. **Liability ex delicto—(a) In general.**—It is wholly impossible within the limits of this chapter to lay down with any degree of precision or minuteness the rules governing the liability of public corporations for the tortious acts or omissions of their officers and agents. The rules governing the decision of these questions will be set forth and discussed in detail in the subsequent chapters. For this chapter the effort of the writer will be to state broadly the general principles according to which the liability of the corporation for the torts of its officers and agents is determined—less with a view to practical utility than to prepare the mind of the reader for an intelligent consideration of the particular rules obtaining in the different classes of cases in which this liability is sought to be enforced. "No rule on this subject can be so precisely stated as to embrace all the torts for which it has been held by some court or another that a private action will lie against a municipal corporation."[90]

§ 268. **(b) Discretionary and legislative acts.**—Where torts are committed by the officers or agents of the public corporation in the exercise of those discretionary and legislative powers which are delegated to them by the legislature; when those officers or agents in exercising those powers, or by failure to exercise them, incidentally commit torts against natural persons or private corporations,—the municipality is wholly free from liability.[91] The reason for this rule,

[88] Randall v. Van Vechten, 19 Johns. (N. Y.) 59.

[89] Ulam v. Boyd, 87 Pa. St. 477.

[90] Conway v. City of Beaumont, 61 Tex. 10.

[91] Johnston v. District of Columbia, 118 U. S. 19; s. c. 6 S. Ct. 923; Trescott v. City of Waterloo, 26 Fed. 592; Seifert v. City of Brooklyn, 101 N. Y. 136; s. c. 4 N. E. 321; Cole v. Medina, 27 Barb. (N. Y.) 218; Wilson v. Mayor &c., 1 Denio (N. Y.) 595; Cain v. City of Syracuse, 95 N. Y. 83; Mills v. City of Brooklyn, 32 N. Y. 489; Griffin v. Mayor &c., 9 N. Y. 456; Whitsett v. Union D. & R. Co., 10 Colo. 243; s. c. 15 Pac. 339; Lincoln v. City of Boston, 148 Mass. 578; s. c. 20 N. E. 329; French v. City of Boston, 129 Mass. 592; Tainter v. City of Worcester, 123 Mass. 311; Pierce v. City of New Bedford, 129 Mass. 534; Steele v. City of Boston, 128 Mass. 583; Randall v. Eastern &c. R. Co., 106 Mass. 276; Fisher v. City of Boston, 104 Mass. 87; Hafford v. City of New Bedford, 16 Gray (Mass.) 297; Wright v. City Council &c., 78 Ga. 241; Weller v. City of Burlington, 60 Vt. 28; s. c. 12 Atl. 215; Hutchinson v. Town of Concord, 41 Vt. 271; Calwell v. City of Boone, 51 Iowa 687; s. c. 2 N. W. 614; Schultz

with an outline of the classes of acts which are deemed discretionary and legislative within the protection of the doctrine, is clearly and forcibly stated by Judge Cooley in his work on Constitutional Limitations. One passage is quoted from that work in the following section.

§ 269. (c) The same subject continued.—"As no state," says this eminent publicist, "does or can undertake to protect its people against incidental injuries resulting from its adopting or failing to adopt any proposed legislative action, so no similar injury resulting from municipal legislative action or non-action can be made the basis of a legal claim against a municipal corporation. The justice or propriety of its opening or discontinuing a street, of its paving or refusing to pave a thoroughfare or alley, of its erecting a proposed public building, of its adopting one plan for a public building or work rather than another; or of the exercise of any other discretionary authority committed to it as a part of the governmental machinery of the state, is not suffered to be brought in question in an action at law and submitted to the determination of court and jury. If, therefore, a city temporarily suspends useful legislation; or orders and constructs public works from which incidental injury results to individuals; or adopts unsuitable or insufficient plans for public bridges, buildings, sewers, or other public works; or in any other manner, through the

v. City of Milwaukee, 49 Wis. 254; s. c. 5 N. W. 342; City of Anderson v. East, 117 Ind. 126; s. c. 19 N. E. 726; Wheeler v. City of Plymouth, 116 Ind. 158; s. c. 18 N. E. 532; City of Lafayette v. Timberlake, 88 Ind. 330; Heller v. Mayor &c., 53 Mo. 159; McKenna v. City of St. Louis, 6 Mo. App. 320; Robinson v. City of Evansville, 87 Ind. 334; Ray v. City of Manchester, 46 N. H. 59; Altvater v. Mayor &c., 31 Md. 462; Bauman v. City of Detroit, 58 Mich. 444; s. c. 25 N. W. 391; Burford v. City of Grand Rapids, 53 Mich. 98; s. c. 18 N. W. 571; Western College v. City of Cleveland, 12 Ohio St. 375; Frith v. City of Dubuque, 45 Iowa 406; City of Davenport v. Stevenson, 34 Iowa 225; Swenson v. City of Lexington, 69 Mo. 157; Kistner v. City of Indianapolis, 100 Ind. 210; White v. Corporation of Yazoo City, 27 Miss. 357; City of Fort Worth v. Crawford, 64 Tex. 202; Black v. City of Columbia, 19 S. C. 412; Hill v. Board &c., 72 N. C. 55; Van Horn v. City of Des Moines, 63 Iowa 447; s. c. 19 N. W. 293; Freeport v. Isbell, 83 Ill. 440; Miller v. City of St. Paul, 38 Minn. 134; s. c. 36 N. W. 271; Mendel v. City of Wheeling, 28 W. Va. 233; Wheeler v. City of Cincinnati, 19 Ohio St. 19; Greenwood v. Louisville, 13 Bush (Ky.) 226; Jewett v. City of New Haven, 38 Conn. 368; Torbush v. City of Norwich, 38 Conn. 225; Howard v. City of San Francisco, 51 Cal. 52; Davis v. City Council &c., 51 Ala. 139; Lehigh Co. v. Hoffort, 116 Pa. St. 119; s. c. 9 Atl. 177; McDade v. City of Chester, 117 Pa. St. 414; s. c. 12 Atl. 421; Grant v. City of Erie, 69 Pa. St. 420; Carr v. Northern Liberties, 35 Pa. St. 324. See Cooley Const. Lim. 257; 2 Dillon Munic. Corp., § 950.

exercise or failure to exercise its political authority, causes incidental injury to individuals, an action will not lie for such injury. The reason is obvious. The maintenance of such an action would transfer to court and jury the discretion which the law vests in the municipality; but transfer them not to be exercised directly and finally but indirectly and partially by the retroactive effect of punitive verdicts upon special complaints."[92]

§ 270. (d) **Ministerial acts.**—The converse of the propositions laid down in the two preceding sections is equally true with those propositions; that is to say, the municipal corporation is liable for the tortious acts and omissions of its officers or agents when those acts or omissions are violations of absolute and ministerial duties.[93] This rule is well established and rests upon the principle that a municipal corporation is, like all other persons natural or artificial, liable for the proper performance of duties which are not discretionary or legislative in their nature, but which are absolute and ministerial. This doctrine is, however, to be modified by the rule that this duty must, even though ministerial, be not for the public but for the private advantage of the corporation, as more fully explained hereafter.

§ 271. (e) **Public as contradistinguished from private duties.**—The whole doctrine of the liability of public corporations for the torts of their officers or agents is affected and modified by the principle that the tortious act or omission must be in violation not of a

[92] Cooley Const. Lim. 253-255.

[93] Evanston v. Gunn, 99 U. S. 660; Barnes v. District of Columbia, 91 U. S. 540; City of Galveston v. Posnainsky, 62 Tex. 118; s. c. 13 Am. & Eng. Corp. Cas. 484; Nelson v. Village of Canisteo, 100 N. Y. 89; s. c. 2 N. E. 473; Ehrgott v. Mayor &c., 96 N. Y. 264; Noonan v. City of Albany, 79 N. Y. 470; Hamilton v. Mayor &c., 52 Ga. 435; Erie City v. Schwingle, 22 Pa. St. 384; Sawyer v. Corse, 17 Gratt. (Va.) 230; Farquar v. City of Roseburg, 18 Or. 271; s. c. 22 Pac. 1103; Bohen v. City of Waseca, 32 Minn. 176; s. c. 19 N. W. 730; O'Neill v. City of New Orleans, 30 La. An. 220; McCombs v. Town Council &c., 15 Ohio 474, 476; Town of Waltham v. Kemper, 55 Ill. 346; Meares v. Commissioners &c., 9 Ired. L. (N. C.) 73; Wilson v. City of Wheeling, 19 W. Va. 323; Gilluly v. City of Madison, 63 Wis. 518; s. c. 24 N. W. 137; City of Boulder v. Niles, 9 Colo. 415; s. c. 12 Pac. 632; Gilman v. Laconia, 55 N. H. 130; Hewison v. City of New Haven, 34 Conn. 136; Kiley v. City of Kansas, 87 Mo. 103; Albrittin v. Mayor &c., 60 Ala. 486. Many additional cases could be cited in support of the doctrine of the text, but it is believed to be useless to do so. The proposition of the text is indeed conceded learning in this country. Where the evidence clearly shows that the injury was a ministerial act and not governmental, as in the operation of a quarry, it is proper to refuse an instruction on the general subject of governmental functions: City Council &c. v. Owens, 111 Ga. 464; s. c. 36 S. E. 830.

public but of a private duty. The reason and the essence of this rule is clear and easily to be understood, but its application to the specific cases is often of great difficulty. The rule is laid down in a recent Texas case, and is approved by courts as a rule, as follows: "So far as public corporations of any class and however incorporated exercise powers conferred on them for purposes essentially public—purposes pertaining to the administration of general laws made to enforce the general policy of the state—they should be deemed agencies of the state, and not subject to be sued for any act or omission occurring while in the exercise of such power, unless by statute the action be given. In reference to such matters they should stand as does sovereignty, whose agents they are, subject to be sued only when the state by statute declares they may be. In so far, however, as they exercise powers not of this character, voluntarily assumed,—powers intended for the private advantage and benefit of the locality and its inhabitants,—there seems to be no sufficient reason why they should be relieved from that liability to suit and measure of actual damage to which an individual or private corporation exercising the same powers for purposes essentially private would be liable."[94] Where officers, as town selectmen, are independent public officers with duties prescribed by law, the city is not liable for their default in the performance of duties.[95] Where a municipality is in the exercise of government functions it is not liable in damages; as where a person is arrested by the police and confined in a city prison and injured by reason of improper construction and maintenance of such prison.[96]

§ 272. **(f) The rule applied to public quasi-corporations.**—The rule of non-liability of a public quasi-corporation is illustrated in a decision of the supreme court of Illinois. A drainage district enlarged its boundaries, thus discharging more water on the plaintiff's land than it had a right to do, and the work was also performed negligently. In declaring that there was no corporate liability the court said: "That a private corporation, formed by voluntary agreement for private purposes, is held to respond in a civil action for its negligence or tort, goes without saying; and yet, in deciding the mooted question at issue in this case, it seems convenient to restate that

[94] 15 Am. & Eng. Encyc. of Law 1141; City of Galveston v. Posnainsky, 62 Tex. 118; s. c. 13 Am. & Eng. Corp. Cas. 484.

[95] Felch v. Town of Weare, 69 N. H. 617; s. c. 45 Atl. 591. Cf. Doolittle v. Walpole, 67 N. H. 554; s. c. 38 Atl. 19; Wakefield v. Newport, 62 N. H. 624; Edgerly v. Concord, 62 N. H. 8; Gross v. City of Portsmouth, 68 N. H. 266; s. c. 33 Atl. 256.

[96] Gray v. Mayor &c., 111 Ga. 361; s. c. 36 S. E. 792.

proposition. So, also, it is admitted law that municipal corporations proper, such as villages, towns and cities, which are incorporated by special charter or voluntarily organized under general laws, are liable to individuals injured by their negligent or tortious conduct, or that of their agents and servants in respect to corporate duties. In regard to public involuntary quasi-corporations the rule is otherwise, and there is no such implied liability imposed upon them. These latter, such as counties, townships, school districts, road districts and other similar quasi-corporations, exist under general laws of the state which apportion its territory into local subdivisions for the purposes of civil and governmental administration, and impose upon the people residing in said several subdivisions precise and limited public duties and clothe them with restricted corporate functions coextensive with the duties devolved upon them. In such organizations the duties and their correlative powers are assumed in invitum, and there is no responsibility to respond in damages in a civil action for neglect in the performance of duties, unless such action is given by statute.[97] The grounds upon which the liability of a municipal corporation proper is usually placed are that the duty is voluntarily assumed and is clear, specific and complete, and that the powers and means furnished for its proper performance are ample and adequate.[98] In such case there is a perfect obligation, and a consequent civil liability, for neglect in all cases of special private damages. The non-liability of the public quasi-corporation unless liability is expressly declared is usually placed upon these grounds: that the corporations are made such nolens volens; that their powers are limited and specific; and that no corporate funds are provided which can, without express provision of law, be appropriated to private indemnification. Consequently in such the liability is one of imperfect obligation, and no civil action lies at the suit of an individual for non-performance of the duty imposed."[99]

§ 273. Conclusion.—The writer has endeavored in the preceding sections to give a very general outline of the principles governing the liability of the corporation for the torts of its officers and agents. These rules are necessarily broad and general to a degree which perhaps deprives them of any considerable practical value. They will serve, however, to show the general trend of the adjudications in

[97] 2 Dillon Munic. Corp., §§ 761, 762; Cooley Const. Lim. 240, 247; Hedges v. Madison Co., 1 Gilman (Ill.) 567; Town of Waltham v. Kemper, 55 Ill. 346.

[98] Browning v. City of Springfield, 17 Ill. 143.

[99] Elmore v. Drainage Com'rs, 135 Ill. 269; s. c. 25 N. E. 1010; 34 Am. & Eng. Corp. Cas. 491.

this country on the subject under consideration. As has been remarked by almost every writer on this topic, it is impossible to lay down rules of greater definiteness. The particular circumstances of each case must be carefully considered and the decisions relating to the class of torts to which belongs that which forms the subject-matter of the action must be examined before the law upon any specific case can be determined. The general results of these rules may be stated to be as follows: If the tort is one for which the municipality is expressly made liable by statute, that fact of course concludes the liability of the corporation. If such is not the case, then the tort must consist—in the case of public corporations other than public quasi-corporations—of the violation of a private duty imposed for private corporate advantage; and not of a public or governmental duty imposed for the benefit of the public at large. In the case of public quasi-corporations, the general rule is that they are liable only for those torts for which the statute expressly prescribes that they shall be liable.

CHAPTER IX.

PUBLIC BOARDS.

SECTION

274. Corporate assemblies of the old English corporations.
275. The same subject continued—Notice at common law.
276. The same subject continued—Presence of the mayor.
277. Regular or stated meetings—Time for holding.
278. Adjournments.
279. Special meetings.
280. Adjourned meetings.
281. Notice of special meetings.
282. The same subject continued—Specification of object of meeting.
283. Adjourned meetings—Time for holding.
284. Corporation represented by governing boards.
285. The same subject continued—Meeting essential to official action.
286. The same subject continued—Delegation of powers.
287. The same subject continued.
288. Delegation of powers—A Pennsylvania case.
289. The same subject continued—The rule limited.
290. Constitution of council.
291. The same subject continued.
292. Conflicting councils—Kerr v. Trego.
293. Acts of de facto councils.
294. Quorum of definite body.
295. The same subject continued.
296. The same subject continued—An exception to the rule.
297. The same subject continued—Special charter provisions.
298. Quorums and majorities further considered—The rule in England.
299. The same subject continued—Decisions in the United States.
300. Further application of majority principle.
301. Execution of authority vested in two persons.
302. Presiding officer.
303. The same subject continued.
304. Commitment for contempt—Whitcomb's case.
305. Ayes and nays.
306. Parliamentary law.
307. Reconsideration and rescission—General power.
308. The same subject continued.
309. Power to reconsider and rescind qualified.
310. The same subject continued.
311. Reconsideration distinguished from repeal.
312. Joint assemblies of definite bodies—Constitution and proceedings.
313. Record of meetings.

§ 274. Corporate assemblies of the old English corporations.—In England to constitute a corporate assembly there must at common law be present the mayor or other head officer,[1] a majority of each defi-

[1] He must be the officer de jure and not merely de facto: Rex v. Heb-

nite integral part,[2] and some members of the indefinite class usually called the commonalty.[3] The latter class is generally either by prescription or by charter represented by a common council, and when this body exists an assembly of such is deemed a corporate assembly, and the presence of the legal president is necessary although not required by charter.[4] Where there is no definite class entitled to participate in corporate acts, and the governing body consists wholly of a definite or select class, it is necessary, to constitute a corporate assembly (sometimes termed in this case a select assembly), that a majority of the select class or classes shall be present. But the attendance of the mayor is not required at a meeting of this kind unless it is expressly so provided.[5]

§ 275. The same subject continued—Notice at common law.—Where the days and times for the transaction of particular business are appointed by usage, statute, charter or by-laws, all the members are presumed to have knowledge thereof, and no notice is necessary.[6] When a meeting is assembled for a special purpose, every member who has a right to vote is entitled to notice,[7] unless he has quit the municipality without either retaining a house or leaving his family within its limits.[8] The notice must be issued by order of some one who has

den, Andr. 388, 391; Rex v. Dawes, 4 Burr. 2277, 2279; Rex v. Mayor &c., 5 T. R. 66, 72. And he must attend in that capacity: Rex v. Carter, Cowp. 58.

[2] That is, a majority of that number by which each of these parts is constituted, and not merely a majority of the surviving or existing members: Rex v. Morris, 4 East 17, 26; Rex v. Bellringer, 4 T. R. 810, 823; Rex v. Thornton, 4 East 294, 307; Rex v. Miller, 6 T. R. 268, 278; Rex v. Devonshire, 1 B. & C. 609, 614; Rex v. Hill, 4 B. & C. 426, 441; Rex v. Lathrop, 1 W. Bl. 468, 471.

[3] Rex v. Vario, Cowp. 248, 250; Rex v. Monday, Cowp. 530, 539; Rex v. Bower, 1 B. & C. 492, 498; Rex v. Bellringer, 4 T. R. 810, 822.

[4] Willcock Munic. Corp., § 126.

[5] Willcock Munic. Corp., §§ 92, 106. By the English Municipal Corporations Act of 1835 (5 & 6 Wm. IV, ch. 76, § 69) one-third of the council by which the corporation is represented constitutes a quorum. The mayor presides, but if he is absent a presiding officer is chosen who has a casting vote.

[6] Rex v. Hill, 4 B. & C. 426, 441, 443; Willcock Munic. Corp., § 59. But if it is intended to do any other act of importance at such a meeting, a notice is necessary: Rex v. Mayor &c., 2 Burr. 723, 734; Rex v. Mayor &c., 2 Burr. 738, 744; Rex v. Hill, 4 B. & C. 426, 442; Rex v. Theodorick, 8 East 543, 545.

[7] Rex v. Mayor &c., 2 Burr. 723, 731; Rex v. May, 5 Burr. 2681; Rex v. Mayor &c., Cas. temp. Hardw. 147, 151; Rex v. Lisle, Andr. 163, 173; Kynaston v. Mayor &c., 2 Str. 1051; Rex v. Theodorick, 8 East 543, 546; Rex v. Hill, 4 B. & C. 426, 441. Including every member of an "indefinite" body, if the incidental powers of the corporation are still exercised by the body at large: Rex v. Company &c., 8 T. R. 356.

[8] Rex v. Grimes, 5 Burr. 2598; Rex

authority to assemble the corporation for that particular purpose.[9] It must be personally served upon him, but in case of his temporary absence it may be left with his family or at his last place of abode.[10] It must be given a reasonable time before the hour of meeting; and if the meeting be not at the usual place it should contain an intimation of that circumstance.[11] It is not necessary to state what business is to be transacted when it relates only to the ordinary affairs of the corporation; but when it is for the purpose of election, a motion, or making ordinances, the fact should be stated, for some may "feel it their duty to attend upon such occasions, to counteract the spirit of party and preserve the fundamental principles of their constitution."[12] "If every member of a select body be present either at a meeting on the charter day, or specially convened, or even by accident at a proper place and time, they may by unanimous consent[13] dispense with notice, and transact any extraordinary business within their peculiar province."[14] Their unanimity is only necessary for entering upon the business, after which it may be transacted in the same manner as if the assembly had met upon proper notice.[15]

§ 276. The same subject continued—Presence of the mayor.—It is the common-law privilege attached to the office of mayor that he is an integral part of the corporation, and that no corporate act done in his absence is valid.[16] He must preside not only at the transaction

v. Mayor &c., Cas. temp. Hardw. 147. It is no sufficient excuse for omission of notice that the officer serving it heard and believed he had departed, if such was not the fact: Willcock Munic. Corp., § 68.

[9] But the want of authority may be waived by the presence and consent of all: Rex v. Hill, 4 B. & C. 426, 444; Rex v. Gaborian, 11 East 77, 86, n.; Rex v. Atkins, 3 Mod. 3; s. c. 2 Show. 237. At common law a meeting can be summoned only by the mayor: Willcock Munic. Corp., § 94.

[10] Rex v. Mayor &c., Cas. temp. Hardw. 147; Kynaston v. Mayor &c., 2 Str. 1051. It need not be in writing: Rex v. Hill, 4 B. & C. 426, 442.

[11] Rex v. Hill, 4 B. & C. 426, 442. The guildhall is the proper place, but if there be none some particular place should be appointed: Musgrove v. Nevison, 1 Str. 584; s. c. 2 Ld. Raym. 1358; Rex v. May, 5 Burr. 2682.

[12] Willcock Munic. Corp., § 74; Rex v. Tucker, 1 Barnard. 26; Rex v. Mayor &c., Cas. temp. Hardw. 147; Rex v. Theodorick, 8 East 543; Rex v. Hill, 4 B. & C. 426, 441.

[13] It ought to appear plainly by their conduct that they are unanimous: Willcock Munic. Corp., § 80.

[14] Willcock Munic. Corp., § 79; Rex v. Theodorick, 8 East 543; Rex v. Wake, 1 Barnard. 80.

[15] Willcock Munic. Corp., § 81. But if the charter requires a special notice, this can not be dispensed with, even by unanimous consent: Rex v. Theodorick, 8 East 543.

[16] Rex v. Atkins, 3 Mod. 3; s. c. 2 Show. 237; Tremaine 233; Rex v. Gaborian, 11 East 77, 87, n.; 1 Rol. Abr. 514, tit. Corporations (G), pl.

of those affairs which are merely voluntary or convenient, such as the election of new members into the corporation, or an indefinite class, but at those which are of the utmost necessity, as the filling of vacancies or the annual election of the officers.[17] The mayor must also propose the particular business or acquiesce in the proposal of another;[18] and he must preside from the beginning to the conclusion of each distinct transaction.[19] In some instances, however, either by immemorial usage or by the terms of the charter, the presence of the head officer is dispensed with, and an alternative substituted. In such cases all the requisites of legality must exist in the office of the person substituted, and if he hold by delegation from the head officer, he must not only be the legal deputy, but appointed by the legal principal.[20]

§ 277. **Regular or stated meetings—Time for holding.**—The meetings of corporate bodies are either (1) regular or stated, (2) special, or (3) adjourned meetings. Unless the time for the stated meetings of the governing body is fixed by charter or statute, or otherwise provided for by law, the power of determination resides with the body itself. Where a city charter requires the council to hold "stated meetings," and omits to designate the time, the council may upon simple motion prescribe such time, which may be changed by the council alone; also upon mere motion, although it has been previously fixed by a formal resolution, approved by the mayor and published.[21] All the members of the board are presumed to have knowledge of the times for holding the stated meetings; and if any member fails to attend he voluntarily waives his right to participate in the

7; Rex v. Trew, 2 Barnard. 370. "The doctrine of the English courts as to the old corporations in that country, that the mayor was an integral part of the corporation, and that the acts of the corporation in his absence were invalid, has, it is believed, no application to the office of mayor in this country. With us, the powers and duties of the mayor depend entirely upon the provisions of the charter, or the act under which the corporation is organized, and the by-laws passed in pursuance of such authority:" Martindale v. Palmer, 52 Ind. 411, 413; Welch v. Ste. Genevieve, 1 Dillon 130.

[17] Rex v. Lisle, Andr. 163, 174; Rex v. Hebden, Andr. 388, 392.

[18] Rex v. Gaborian, 11 East 77, 86, n., 87, n.; Rex v. Buller, 8 East 389, 392; 1 Rol. Abr. 514, tit. Corporations; Rex v. Williams, 2 Mau. & S. 141, 144.

[19] See cases cited in preceding note.

[20] Willcock Munic. Corp., § 105; Rex v. Gaborian, 11 East 77, 86, n.; Rex v. Corry, 5 East 372, 381; s. c. 1 Smith 543.

[21] It requires only such action on their part as expresses the will of the body: State v. Kantler, 33 Minn. 69; s. c. 21 N. W. 856; 6 Am. & Eng. Corp. Cas. 169.

business of the meeting, and is bound by whatever is done within the ordinary range of the duties of the board.[22]

§ 278. **Adjournments.**—At a meeting duly called a majority of a quorum have the incidental right to adjourn to another time, either on the same or on a future day.[23] And if an adjournment is irregular because of the want of a quorum, but the adjourned meeting is attended by all the members, who participate without objection in the proceedings, the irregularity is cured, and in the absence of any finding the court will presume that all did so attend.[24] But under an

[22] People v. Batchelor, 22 N. Y. 128; Gildersleeve v. Board of Education, 17 Abb. Pr. (N. Y.) 201, 208. As to presumptions in favor of the regularity of meetings, see Hudson Co. v. State, 24 N. J. L. 718; State v. Smith, 22 Minn. 218; Insurance Co. v. Sanders, 36 N. H. 252; State v. Mayor &c., 25 N. J. L. 309. But in People v. Batchelor, supra, where the board of aldermen at a stated meeting adopted a resolution to meet in convention with the mayor on the same day, for the purpose of making certain appointments, it was held that those absent from the stated meeting were entitled to reasonable notice of the time for holding the convention. For construction of city charter of Buffalo (laws of N. Y. 1891, ch. 105), see Kittinger v. Buffalo Traction Co., 160 N. Y. 377; s. c. 54 N. E. 1081.

[23] In re Newland Ave., 38 N. Y. St. 796; s. c. 15 N. Y. S. 63; Ex parte Wolf, 14 Neb. 24; s. c. 14 N. W. 660; 6 Am. & Eng. Corp. Cas. 153; citing Dillon Munic. Corp. 287. The power is incident to special as well as regular meetings: Stockton v. Powell, 29 Fla. 1; s. c. 10 So. 688. By parliamentary law if only a minority have assembled they may adjourn to the next day on which the body can meet for the transaction of business: People v. Common Council &c., 5 Lans. (N. Y.) 142, 147. Arbitrary adjournment by presiding officer,—see § 303, post. "The rule, as we understand, applicable to all deliberate bodies, is that any number have power to adjourn, though they may not be a quorum for the transaction of business:" Kimball v. Marshall, 44 N. H. 465, 468 (board of aldermen). "It is not at all unusual, and never has been supposed to be unlawful, for meetings of corporations to be adjourned for want of a quorum, without transacting any other business." This remark was made in a case where a town meeting adjourned to a certain day (not the day of a regular meeting), without the choice of a moderator. But the learned judge seems not to have confined his statement to adjournments of popular meetings: Attorney-General v. Simonds, 111 Mass. 256, 260. "The law is silent as to the power of the board [of school inspectors] to adjourn. We think they have the right to adjourn, for any sufficient reason, both as to time and place; and unless it be made to appear that such adjournment was an abuse of the corporate functions, and operated to the detriment of those affected, or to be affected, by the proceedings, such action is not subject to review:" Donough v. Dewey, 82 Mich. 309, 312; s. c. 46 N. W. 782.

[24] State v. Smith, 22 Minn. 218. See also, on the last point, Citizens' &c. Ins. Co. v. Sortwell, 8 Allen

act providing that sessions "shall continue six days, if business shall so long require, and no longer," a board has no power to adjourn beyond six days, and proceedings at such an adjourned session are coram non judice and void.[25]

§ 279. **Special meetings.**—It is competent for a public board, unless expressly or impliedly prohibited by statute, to call special meetings for the transaction of business proper to come before it; and where a regular meeting was adjourned to the next regular meeting without taking final action on a certain matter, and at a special meeting called and held during the interval it was again taken up and disposed of, the validity of the proceedings was sustained.[26] Where the charter expressly provided that the action of the city assembly at a special session called by the mayor should be confined to the objects specially stated to them when assembled, the language was interpreted to exclude legislation upon matters communicated to it by the mayor during the session but after the time when it assembled.[27]

§ 280. **Adjourned meetings.**—An adjourned meeting of either a regular or special meeting is a continuation of the same meeting, and any business which it would have been proper to consider at the meeting may be acted upon at the adjourned meeting.[28] Conversely,

(Mass.) 217, 223; Sargent v. Webster, 13 Met. (Mass.) 497, 504; Chosen Freeholders &c. v. State, 24 N. J. L. 718; Rutherford v. Hamilton, 97 Mo. 543; s. c. 11 S. W. 249. The use of the word "recess" by the clerk instead of "adjourn" is immaterial: Ex parte Mirande, 73 Cal. 365; s. c. 14 Pac. 888.

[25] Grimmett v. Askew, 48 Ark. 151; s. c. 2 S. W. 707.

[26] Douglass v. Board &c., 23 Fla. 419; s. c. 2 So. 776. In this case, however, no stated time for meetings was prescribed by statute. See also, People v. Batchelor, 22 N. Y. 128.

[27] City of St. Louis v. Withaus, 90 Mo. 646; s. c. 3 S. W. 395.

[28] Magneau v. City of Fremont, 30 Neb. 843; s. c. 47 N. W. 280; Warner v. Mower, 11 Vt. 385; City of New Orleans v. Brooks, 36 La. An. 641; Street Case, 1 La. An. 412; Hudson Co. v. State, 24 N. J. L. 718; People v. Batchelor, 22 N. Y. 128; Smith v. Law, 21 N. Y. 296; People v. Martin, 5 N. Y. 22; Rex v. Harris, 1 B. & Ad. 936; Scadding v. Lorant, 5 Eng. L. & Eq. 16. Where the statute requires that a township officer be elected at a regular meeting held on a particular day, such officer may properly be elected at a meeting, held at a later day, which is an adjournment of the regular meeting: Carter v. McFarland, 75 Iowa 196; s. c. 39 N. W. 268; State v. Vanosdal, 131 Ind. 388; s. c. 31 N. E. 79. See also, State v. Harrison, 67 Ind. 71; Sackett v. State, 74 Ind. 486. A statute required supervisors to act at their "session in October." It was held that they might act at an adjourned session: Hubbard v. Winsor, 15 Mich. 145. Where a regular meeting adjourns for a particular pur-

an adjourned meeting is limited to those subjects upon which it was competent for the original meeting to take action. Thus, where a charter provided that no ordinance should be passed by the common council unless introduced at a previous stated meeting, and the record showed that the ordinance in question was introduced at a previous adjourned meeting, without disclosing whether it was an adjourned meeting of a stated or of a special meeting, the defect was held to be fatal.[29]

§ 281. **Notice of special meetings.**—A charter provision requiring a city council to meet "at such time and place as they by resolution may direct" is mandatory but not prohibitory, and a valid meeting may be convened at a time not fixed by resolution.[30] Every member entitled to be present at a special meeting is entitled to notice of the time and place thereof, which must be served upon him personally, if practicable, or unless some other mode of notice is prescribed by statute or charter.[31] Where a charter provided that the mayor should

pose, the adjourned meeting is not confined to that purpose, but may take up other legislative business: Ex parte Wolf, 14 Neb. 24; s. c. 14 N. W. 660. In this country an adjourned meeting of a special meeting is not limited to matters actually begun, but unfinished, at the first meeting, and may, in Judge Dillon's opinion, consider proper business ab initio: Dillon Munic. Corp., § 287, n. See also, Cassidy v. City of Bangor, 61 Maine 434, 441. Action taken at an adjourned regular meeting is legal, though no provision is made in the code for recess or adjournment: Nixon v. City of Biloxi, 76 Miss. 810; s. c. 25 So. 664.

[29] State v. Mayor &c., 25 N. J. L. 309. See also, State v. Inhabitants &c., 45 N. J. L. 318; s. c. 2 Am. & Eng. Corp. Cas. 38. Where the governing body consists of two branches, the unfinished business of either body must be taken up in the next year de novo: Wetmore v. Story, 22 Barb. (N. Y.) 414.

[30] State v. Smith, 22 Minn. 218. Code of Iowa, § 303, provides that the board of supervisors, at any regular meeting, shall have power "to provide for the erection of all bridges." The code provides for special meetings, but does not prescribe the kind of business that may be transacted. It was held that the statute does not prohibit making provision for the erection of bridges at a special meeting, or reconsidering at a special meeting provisions made at a regular meeting: Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394.

[31] Rogers v. Slonaker, 32 Kan. 191; s. c. 4 Pac. 138; People v. Batchelor, 22 N. Y. 128; Harding v. Vandewater, 40 Cal. 77; Burgess v. Pue, 2 Gill (Md.) 254; Downing v. Rugar, 21 Wend. (N. Y.) 178; Stow v. Wyse, 7 Conn. 214; Paola &c. R. Co. v. Commissioners, 16 Kan. 302, an excellent case, in which Brewer, J., shows that the rule is not arbitrary, but founded upon the clearest dictates of reason; Wiggin v. Elder &c., 8 Met. (Mass.) 301; Ex parte Rogers, 7 Cowen (N. Y.) 526, n.; Baltimore Turnpike, 5 Binn. (Pa.) 481; Cassin v. Zavalla Co., 70 Tex. 419; s. c. 8 S. W. 97. See also, § 275, ante. And for a construction of provisions

be ex officio a member of a board of road commissioners and preside at its meetings when present, but without a vote except in case of a tie, it was held that he was entitled to notice of a meeting, although there was not a tie vote in the particular instance.[32] But the omission of notice is cured by the presence and consent of all the members,[33]

relating to notice in the English Municipal Corporations Act, 5 & 6 Wm. IV, ch. 76, § 69 (Consolidated Act, 1882, § 22), see Town Council &c. v. Court, 1 El. & El. 770; Reg. v. Whipp, 4 Q. B. 141; Reg. v. Grimshaw, 10 Q. B. 747, 755; Reg. v. Thomas, 8 Ad. & El. 183; Rex v. Harris, 1 B. & Ad. 936.

[32] State v. Kirk, 46 Conn. 395, holding also that a written notice to a member absent from the state, left at the store of his son, which he was in the habit of visiting daily when in town, was sufficient. Code of Iowa, § 301, provides that, on request for a special meeting of the board, the auditor shall fix a day for such meeting, and give notice in writing to each supervisor personally or by leaving a copy thereof at his residence, at least six days before the day appointed, and also give notice by publication in newspapers published in the county, or, if there be none, by causing notice to be posted at the court-house and at two other places, one week before the time set. Held, that the six days' limitation of the notice refers to the copy left at the residence, and not to the personal notice; and the one-week limitation of the public notice refers to the posted notice, and not the publication in a newspaper: Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394. Charter provisions as to notice must be strictly pursued: Lord v. City of Anoka, 36 Minn. 176; s. c. 30 N. W. 550. See also, Scott v. Union Co., 63 Iowa 583; s. c. 19 N. W. 667. The notice may be oral, provided all the members receive it in time to attend: Scott v. Paulen, 15 Kan. 162; White v. Fleming, 114 Ind. 560; s. c. 16 N. E. 487. Two days' notice for persons all residing in the city, and whose duty it is to reside in the city and to be ready to perform the functions of their office, is not so clearly a short notice that on a pleading it will be pronounced insufficient: People v. Walker, 23 Barb. (N. Y.) 304, 305. In Whiteside v. People, 26 Wend. (N. Y.) 635, the notice was served at 2 o'clock P. M. for a meeting at 5 P. M. of the same day. Where notice of a meeting of school inspectors was required by law to be given by the township clerk, who was ex officio clerk of the board, it was sufficient though signed by him as "clerk of the board": Donough v. Dewey, 82 Mich. 309; s. c. 46 N. W. 782.

[33] Magneau v. City of Fremont, 30 Neb. 843; s. c. 47 N. W. 280; People v. Frost, 32 Ill. App. 242; Thomas v. Citizens' Horse R. Co., 104 Ill. 462; Lawrence v. Traner, 136 Ill. 474; s. c. 27 N. E. 197; Beaver Creek v. Hastings, 52 Mich. 528; s. c. 18 N. W. 250; State v. Smith, 22 Minn. 218. But if third parties have a right to be heard,—for example, taxpayers,—the notice is jurisdictional, and can not be waived by the consent of a majority of those interested: Gentle v. Board &c., 73 Mich. 40; s. c. 40 N. W. 928. There is a presumption in favor of regularity: State v. Inhabitants &c., 45 N. J. L. 318; s. c. 2 Am. & Eng. Corp. Cas. 39; Chosen Freeholders &c. v. State, 24 N. J. L. 718; Rutherford v. Hamilton, 97 Mo. 543; s. c. 11 S. W. 249; Torr v. Corcoran, 115 Ind. 188; s. c. 17 N. E. 286; Prezinger v. Harness, 114 Ind. 491; s. c. 16 N. E. 495, and

"or at least of all who were not properly notified."[34]

§ 282. **The same subject continued—Specification of object of meeting.**—It was held in a very early case in New Jersey that if the particular purpose of a special meeting is stated in the call, acts of the meeting foreign to the purpose specified are invalid.[35] But a contrary rule is laid down in a recent decision of the supreme court of errors of Connecticut. A charter authorized the court of common council to provide by ordinance for the warning of its meetings, but no provision of charter or ordinance required information to be given of the matters to be considered. It was held that the notice of a special meeting need not specify the object thereof, nor could the scope of authority of the council be confined to purposes actually specified in such notice. "The familiar rule of notice," said Judge Prentice, "as applicable to meetings of towns and communities, is one prescribed by statute. It has no application to meetings of governmental representative bodies like courts of common council. Their status and right to act are more allied to those of the governing bodies of private corporations and of the general assembly, and are governed by the same rules."[36] Where all the members of the council and the

Indiana cases there cited; Stoddard v. Johnson, 75 Ind. 20; Tierney v. Brown, 65 Miss. 563; s. c. 5 So. 104; 7 Am. St. 679; Scott v. Paulen, 15 Kan. 162. Cf. State v. Mayor &c., 25 N. J. L. 309; Harding v. Bader, 75 Mich. 316, 321; s. c. 42 N. W. 942; Newaygo Co. Mfg. Co. v. Echtinaw, 81 Mich. 416; s. c. 45 N. W. 1010. Where the county auditor is empowered to call special meetings of the board of commissioners, when the public interests require it, by giving at least six days' notice, unless in his opinion an emergency requires a shorter notice, in which case he may fix it at his discretion, his determination is final and conclusive: Jussen v. Board &c., 95 Ind. 567; Prezinger v. Harness, 114 Ind. 491; s. c. 16 N. E. 495. If want of notice affirmatively appears, it is fatal: Paola &c. R. Co. v. Commissioners, 16 Kan. 302.

[34] Lord v. City of Anoka, 36 Minn. 176; s. c. 30 N. W. 550, 551. Commissioners chosen at a regular meeting of the board to let a bridge contract and superintend the construction, who protested against the legality and the sufficiency of the notice of a subsequent special meeting in which the former action was reconsidered, but took no part in the whole of such meeting, and attempted by so doing to accomplish their purposes, are estopped to deny the sufficiency of the notice of the special meeting: Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394.

[35] Bergen v. Clarkson, 1 Halst. (N. J. L.) 428. The court thought the object of a special meeting ought always to be mentioned in the notice: referring to Rex v. Mayor &c., 2 Burr. 723, 735.

[36] Whitney v. City of New Haven, 58 Conn. 450, 461; s. c. 20 Atl. 666; citing Cooley Const. Lim. (4th ed.) 155, 189; Savings Bank v. Davis, 8 Conn. 192; Town of Westbrook's Appeal &c., 75 Conn. 95; s. c. 17 Atl. 368. See also, Wilson v. Board &c.,

mayor meet and act as a body, they may at such special meeting, or any adjourned session, transact any business within the powers conferred by law, notwithstanding no written call for the meeting was made, or in case one was made which failed to indicate the purpose of the meeting.[37]

§ 283. **Adjourned meetings—Time for holding.**—When a meeting is adjourned to a fixed hour, and only a part of the members attend at the precise time and others arrive later, or some depart before any action is taken, it becomes important to determine when the proceedings may lawfully begin. Upon this question the supreme court of New Hampshire said: "The law has fixed no time at or within which such meeting must be organized, called to order or proceed to business. It has been held that an appearance within the hour after the time fixed will save the default of a party summoned to appear at court at a particular hour;[38] and in former times the proceedings of town meetings have been set aside by the legislature where a party have been in attendance precisely at the hour, and have at once commenced and dispatched the business of the meeting and adjourned finally before the arrival of the members of another party, who, relying upon the usual dilatory mode of commencing such meetings, had made no haste, and had not arrived. And it seems to have been very properly done. A reasonable time should be allowed for parties interested to be present, and an hour may in ordinary cases be well regarded as a reasonable time. Special cases must of course rest on their own circumstances where they show cause for greater delay. * * * And we apprehend no more definite rule can be laid down than this: that where parties assemble in pursuance of a notice or appointment, and remain together for the purpose of attending to the business as soon as it is found convenient or practicable, the proceedings will be held regular, though the delay may seem unreasonable to impatient persons or to those who have engagements elsewhere;

68 Ind. 507; Commissioners &c. v. Kent, 5 Neb. 227; Genesee Tp. v. McDonald, 98 Pa. St. 444, 451.

[37] Magneau v. City of Fremont, 30 Neb. 843; s. c. 47 N. W. 280. The court said, however, that the decisions of the courts are conflicting upon the question whether the call must specify the object of the meeting when the statute is silent. - - - The power of a city clerk to issue a notice for bids for a public improvement, as directed by the city council, is not lost because he made a mistake in his attempt to publish it, where there is no evidence that any one was misled or harmed thereby: Gilmore v. City of Utica, 131 N. Y. 26; s. c. 29 N. E. 841; aff'g s. c. 15 N. Y. S. 274.

[38] Or even a few minutes over the hour: Nugent v. Wrinn, 44 Conn. 273. See also, Wilde v. Dunn, 11 Johns. (N. Y.) 459; Baldwin v. Carter, 15 Johns. (N. Y.) 496; Atwood v. Austin, 16 Johns. (N. Y.) 180.

and no one of the persons thus assembled would be heard to object to the regularity of the proceedings if he should go away without having made a suitable effort to induce the proper officers or persons to proceed with the business; and no third person would be heard to object unless he could show that his rights were affected by the delay."[39]

§ 284. Corporation represented by governing boards.—The corporate body at large of a municipal corporation is usually represented by a common council or other municipal board.[40] Where corporate powers were conferred in general terms upon "townships," the power was decided to belong to the board of directors, and not to the citizens en masse, to select and purchase a site for a township hall.[41] So, under a charter which imposes upon the common council the duty "to manage, regulate and control the property, real and personal, of the city," the expediency of destroying and removing or repairing a city building is to be determined exclusively by the council; and the fact that a majority of the voters of the city have expressed themselves against the destruction under an order of a prior council submitting the question to them does not affect this power.[42] The legislative and discretionary powers of the council can be exercised only by the coming together of the members who compose it, and its purposes or will can be expressed only by a vote embodied in some distinct and definite form.[43] If no method is prescribed by law, it is left free to act either by resolution or ordinance.[44]

§ 285. The same subject continued—Meeting essential to official action.—As a general rule the individual members of a public body possessing deliberative functions have no authority to bind the mu-

[39] Kimball v. Marshall, 44 N. H. 465, 467.

[40] Richards v. Town of Clarksburg, 30 W. Va. 491; s. c. 4 S. E. 774; 20 Am. & Eng. Corp. Cas. 111; Central Bridge Co. v. City of Lowell, 15 Gray (Mass.) 106; Dey v. Mayor &c., 19 N. J. Eq. 412; Schumm v. Seymour, 24 N. J. Eq. 143; Mayor &c. v. Poultney, 25 Md. 18.

[41] State v. Haynes, 72 Mo. 377.

[42] Whitney v. City of New Haven, 58 Conn. 450; s. c. 20 Atl. 666.

[43] Schumm v. Seymour, 24 N. J. Eq. 143 ("The mayor and common council," said the court in that case, "exist only as a board, and they can do no valid act except as a board, and such act must be by ordinance or resolution or something equivalent thereto"); Dey v. Mayor &c., 19 N. J. Eq. 412. Cf. Taylor v. McFadden, 84 Iowa 262; s. c. 50 N. W. 1070, where a resolution for the levy of a tax was offered at the meeting of a city council and certified to the auditor, but the record failed to show that it was adopted by the council, and the adoption, notwithstanding this omission, was inferred from the fact that it was offered and ordered to be so certified.

[44] Halsey v. Rapid Transit R. Co., 47 N. J. Eq. 380; s. c. 20 Atl. 859.

nicipality by unofficial statements made at different times and places.[45] "The public for whom they act," said the supreme court of Ohio, "have the right to their best judgment after free and full discussion and consultation among themselves of and upon the public matters intrusted to them in the session provided for by the statute."[46]

[45] "It would be of most dangerous, not to say fatal tendency, to sanction the notion that parol testimony of witnesses, were it clear and unqualified, could be admitted at the end of ten or twelve years to establish a contract of any kind by a municipal agency required by law to act within a very narrow range of power and to keep a record of its public transactions:" Strong v. District of Columbia, 4 Mackey (D. C.) 242, 249; s. c. 9 Am. & Eng. Corp. Cas. 568. That the corporate body at large is represented by its governing body, acting collectively and not as individuals, is illustrated by decisions in mandamus proceedings to compel the performance of a corporate duty. The peremptory writ may be directed to the corporation in its corporate name, or to the proper officers in their corporate capacity and official style without naming them, and resignations by officers after service of the alternative writ do not abate the proceedings: Commissioners v. Sellew, 99 U. S. 624 (in which case the court said:—"The board is in effect the officer, and the members of the board are but the agents who perform its duties"); City of Little Rock v. Board &c., 42 Ark. 152; County Com'rs &c. v. King, 13 Fla. 451; Maddox v. Graham, 2 Met. (Ky.) 56; State v. Common Council &c., 15 Wis. 33; Pegram v. Commissioners &c., 65 N. C. 114; People v. Collins, 19 Wend. (N. Y.) 56, 68.

[46] McCortle v. Bates, 29 Ohio St. 419, where a written contract signed by a majority of the members of a township board of education, which stipulated that the subscribers would formally ratify the same at a legal meeting, was held to be contrary to public policy, and not enforceable against them personally. The decision is recognized as "undoubtedly sound," in People v. Stowell, 9 Abb. N. C. (N. Y.) 456, but not deemed to render invalid a regular resolution of the common council because the majority acted in pursuance of a mutual pledge made before the body met: Reed v. Inhabitants &c., 152 Mass. 500; s. c. 25 N. E. 974. But a committee chosen by a town to erect a building is an agent, not a board of public officers, and may act by the agreement of the individual members separately obtained: Shea v. Inhabitants &c., 145 Mass. 528; s. c. 14 N. E. 764; Haven v. City of Lowell, 5 Met. (Mass.) 35. "The vestrymen of a church, as the representatives of a corporate body, must meet in order to take official action. They can not act singly, upon the street or wherever they may be found. This is because they are required to deliberate. It is the right of the minority to meet the majority and by discussion and deliberation to bring them over if possible to their own views:" Rittenhouse's Estate, 140 Pa. St. 172, 176; s. c. 21 Atl. 224; Paola &c. R. Co. v. Commissioners &c., 16 Kan. 302, 309. It was held, obiter, in Butler v. City of Charlestown, 7 Gray (Mass.) 12, that if the mayor and aldermen had power to retain counsel on behalf of the city it must be exercised by their official act at a lawful meeting of the

§ 286. The same subject continued—Delegation of powers.—It is well settled that the legislative powers of a municipal corporation can not be delegated to others; such powers are in the nature of public trusts conferred upon the legislative assembly of the corporation for the public benefit, and can not be vicariously exercised. Thus, where a charter provided that a city council should have power "to restrain, prohibit and suppress dram-shops," etc., an ordinance of that body prohibiting the sale of liquor without a license, but authorizing the city treasurer to fix the fee for a license, and the term thereof, within certain limits, was held to be void, as an unwarrantable transfer of discretion designed to be exercised by the council alone.[47] So, also, where the charter of a street railway company

board, and a contract made by a majority of the board informally would not be binding, nor could a custom of the city to pay bills contracted in that manner create a valid claim. See also, on the last point, Sikes v. Hatfield, 13 Gray (Mass.) 347. The fact that the chairman of a town board of supervisors, in the presence of another supervisor, told the pathmaster to fix up a town road so that it could be traveled, and that the board afterwards allowed him a portion of his claim for the work done, does not amount to the making of a contract with him by the board so as to entitle him to sue the town for the balance of his claim. "To bind the town the supervisors must act as a town board:" Dieschel v. Town of Maine, 81 Wis. 553; s. c. 51 N. W. 880; Hardin Co. v. Louisville &c. R. Co., 92 Ky. 412; s. c. 17 S. W. 860; Independent School Dist. v. Wirtner, 85 Iowa 387; s. c. 52 N. W. 243; Commonwealth v. Howard, 149 Pa. St. 302; s. c. 24 Atl. 308; Jackson v. Collins, 16 N. Y. S. 651. See,however, for modified views, Athearn v. Independent Dist. &c., 33 Iowa 105; Hull v. Independent Dist. &c., 82 Iowa 686; s. c. 46 N. W. 1053. A bill to enjoin collection of a school tax alleged that the determination to levy was not made by the school directors at a regular or special meeting, nor in their corporate capacity, but as individuals. Held, that such allegations did not charge that the directors acted in the matter without meeting together: Lawrence v. Traner, 136 Ill. 474; s. c. 27 N. E. 197.

[47] City of East St. Louis v. Wehrung, 50 Ill. 28. See further, as to the delegation by various municipal bodies of powers vested in them, the exercise of which involves questions of expediency, Day v. Green, 4 Cush. (Mass.) 433; Coffin v. Nantucket, 5 Cush. (Mass.) 269; Ruggles v. Inhabitants &c., 11 Cush. (Mass.) 433; State v. Mayor &c., 34 N. J. L. 163; Ruggles v. Collier, 45 Mo. 353, 359; Board &c. v. Brush, 77 Ill. 59; Mayor &c. v. Scharf, 54 Md. 499; Cooley Const. Lim., § 204; Thompson v. Schermerhorn, 6 N. Y. 92. In Matthews v. City of Alexandria, 68 Mo. 115, and City of Oakland v. Carpentier, 13 Cal. 540, cities empowered to build and regulate wharves undertook to confer the right upon lessees or contractors. Cf. Gregory v. City of Bridgeport, 41 Conn. 76 (where under an express power to "ordain by-laws relating to wharves," and a general authority to appoint necessary officers to carry by-laws into effect, an ordinance appointing a superintendent of wharves with

contained a provision that "said railroad shall be laid out by the mayor and aldermen in like manner as highways are laid out," and a single track railroad was laid out by the mayor and aldermen without any turnouts, but with a provision in the record of the laying out that "said horse railroad company may construct such suitable turnouts on either side of said center line as they may find necessary in the prosecution of the business," etc., it was held that the company could not construct a turnout, although necessary for their business and required for public convenience, without a laying out by the mayor and aldermen.[48]

power to order and regulate the mooring of vessels was held to be valid); Birdsall v. Clark, 73 N. Y. 73; State v. Bell, 34 Ohio St. 194; Northern &c. R. Co. v. Mayor &c., 21 Md. 93; Evansville &c. R. Co. v. City of Evansville, 15 Ind. 395; State v. Hauser, 63 Ind. 155; Phelps v. Mayor &c., 112 N. Y. 216; s. c. 19 N. E. 408; Young v. Black Hawk Co., 66 Iowa 460; s. c. 23 N. W. 923; Hannon v. Agnew, 96 N. Y. 439; City of Indianapolis v. Indianapolis &c. Gas Co., 66 Ind. 396; Hickey v. Chicago &c. R. Co., 6 Ill. App. 172; Bibel v. People, 67 Ill. 172, 175; Davis v. Read, 65 N. Y. 566; In re Trustees &c., 57 How. Pr. (N. Y.) 500; City of Kinmundy v. Mayhan, 72 Ill. 462; Darling v. City of St. Paul, 19 Minn. 389; Meuser v. Risdon, 36 Cal. 239; State v. Fiske, 9 R. I. 94; Smith v. Morse, 2 Cal. 524; Whyte v. Mayor &c., 2 Swan (Tenn.) 364; Franke v. Paducah &c. Co., 88 Ky. 467; s. c. 11 S. W. 432, 718; Gale v. Village of Kalamazoo, 23 Mich. 344; s. c. 9 Am. R. 80; Lord v. City of Oconto, 47 Wis. 386; s. c. 2 N. W. 785; Schenley v. Commonwealth, 36 Pa. St. 62; Hydes v. Joyes, 4 Bush (Ky.) 464; s. c. 96 Am. D. 311; State v. Mayor &c., 26 N. J. L. 444; State v. Mayor &c., 42 N. J. L. 395; State v. Mayor &c., 51 N. J. L. 498; s. c. 18 Atl. 116; 28 Am. & Eng. Corp. Cas. 161; Clark v. Mayor &c., 12 Wheat. 40; Minneapolis Gas Light Co. v. City of Minneapolis, 36 Minn. 159; s. c. 30 N. W. 450 (holding that power conferred by the city charter on the city council to provide for lighting the city and altering lamp districts can not be delegated to a committee for final decision); Dillard v. Webb, 55 Ala. 468; City of East St. Louis v. Thomas, 11 Ill. App. 283; Pinney v. Brown, 60 Conn. 164; s. c. 22 Atl. 430; Mullarky v. Town of Cedar Falls, 19 Iowa 21; Milhau v. Sharp, 17 Barb. (N. Y.) 435; s. c. 27 N. Y. 611; Lyon v. Jerome, 26 Wend. (N. Y.) 485; s. c. 37 Am. D. 271; Thomson v. Mayor &c., 61 Mo. 282; Scofield v. City of Lansing, 17 Mich. 437; Lauenstein v. City of Fond du Lac, 28 Wis. 336; Sheehan v. Gleeson, 46 Mo. 100; City of Stockton v. Creanor, 45 Cal. 643 (holding that a common council can not confer upon a committee of its own members a power vested in it to accept a bid or award a contract for grading a street).

[48] Concord v. Concord Horse R. Co., 65 N. H. 30; s. c. 18 Atl. 87. Where a statute provides that certain powers thereby conferred upon a mayor and council shall be executed by them in a certain manner, the unauthorized doings of an officer who undertakes to act for them can not be validated by ratification: the doctrine of estoppel does not apply to such a case: Mayor &c. v. Porter, 18 Md. 289; s. c. 79 Am. D. 686.

§ 287. The same subject continued.—By statute in Connecticut it is the duty of the selectmen to "superintend the concerns of the town."[49] The person first named on a plurality of ballots is first selectman, "and, in the absence of a special appointment, shall be ex officio the agent of such town."[50] A board of selectmen appointed a superintendent of highways and a "town agent." The town had previously at a legal meeting designated the first selectman as superintendent of highways, but had made no special appointment of a town agent. It was held that both appointments by the selectmen were void. In respect of the first, Chief Justice Andrews said: "The selectmen had no authority to make such an appointment. The selectmen of a town are, to be sure, its general prudential officers, and are charged with the duty of superintending the concerns of the town, but in so doing they act as the agents of the town and exercise a delegated authority. Their powers are for the most part conferred by some statute. In respect to the matters mentioned in these statutes they can not go beyond the special limits of the statute. In other matters long usage has given to the selectmen of towns certain powers. In either case their authority is in the nature of a personal trust to be performed by themselves. They have no power to appoint another to perform the duties that devolve on them." And, touching the appointment of town agent, he continued: "Undoubtedly a town, like any other corporation, may appoint an agent for any proper purpose. Possibly a town may appoint an agent to perform any or all duties usually performed by the selectmen, except such as are specifically imposed on the selectmen by the constitution or by some statute. But the selectmen, being themselves agents, can not appoint another or one of themselves to be an agent for their own town. That rule of law governs which is found in the maxim "Delegata potestas non potest delegare." Certainly they could not unless specially empowered so to do. They would have no such authority by virtue of their general powers."[51] This is an application of correct principles to municipal boards.

§ 288. Delegation of powers—A Pennsylvania case.—A Pennsylvania statute provided that two county commissioners should form a board for the transaction of business, and when convened in pursuance of notice or according to adjournment should be competent to perform the duties appertaining to their office. The commissioners

[49] Gen. Stats. 1888, § 64 et seq., where certain duties are also particularized.

[50] Gen. St. 1888, § 48.

[51] Pinney v. Brown, 60 Conn. 164; s. c. 22 Atl. 430.

contracted with one D. to build a court-house.[52] D. made a contract with the plaintiff to supply him with brick. After the plaintiff had delivered part of the brick called for by his contract he refused to deliver the rest on the ground that D. had not paid for the bricks already delivered; whereupon two of the commissioners went to the plaintiff, and with D.'s assent told him to proceed with the delivery of the bricks and that they would pay him. At that time there was more than enough money due to D. from the county to pay the plaintiff for the bricks to be delivered. It did not appear that the other commissioners were informed of or consulted about the matter or that it was discussed at any regular session of the board. The court submitted the question to the jury whether the two commissioners acted in their official capacity or merely as individuals, and a verdict against the county was sustained. The decision may be supported on the ground that the contract of the commissioners was merely an incident to the main contract for the building, regularly made, and that the county could not possibly be subjected to any liability under it in excess of the amount provided in the original undertaking with D. But the opinion of the court does not touch these features of the case, and its reasoning is superficial and inadequate of itself to justify the ruling of the court below.[53]

§ 289. The same subject continued—The rule limited.—But while a council or a similar body can not delegate all the power conferred upon it by the legislature in a given instance, it may like every other corporation do its ministerial work by agents or committees.[54] Where

[52] This seems to have been done at a regular meeting of the board.

[53] Jefferson Co. v. Slagle, 66 Pa. St. 202. See Cooper v. Lampeter Tp., 8 Watts (Pa.) 125 (making a distinction between acts done by one member in the ordinary routine of his duty and others of a nature demanding consultation and deliberation—between the repairing of an old bridge and the building of a new one); Wolcott v. Town of Wolcott, 19 Vt. 37; Throop Public Officers, § 109.

[54] Holland v. State, 23 Fla. 123; s. c. 1 So. 521; Burlington v. Dennison, 42 N. J. L. 165; Kramrath v. City of Albany, 53 Hun (N. Y.) 206; s. c. 6 N. Y. S. 54; Damon v. Inhabitants &c., 2 Pick. (Mass.) 345; Whitney v. City of New Haven, 58 Conn. 450; s. c. 20 Atl. 666, where a charter provision that the board of public works should execute all orders of the council relating to parks, etc., did not deprive the council of authority to delegate to the city auditor the work of destroying a public building situated in a park; Gilmore v. City of Utica, 131 N. Y. 26; s. c. 29 N. E. 841; aff'g s. c. 15 N. Y. S. 274, where clerk of council directed to publish notice of meeting was permitted to fix the day; distinguishing State v. Mayor &c., 25 N. J. L. 309; Bullitt Co. v. Washer, 130 U. S. 142; s. c. 9 S. Ct. 499. Under a statute authorizing the county commissioners "to audit the accounts of all officers having

a city council was vested with power to cause sidewalks in the city to be constructed, the supreme court of the United States decided that it might authorize the mayor and the chairman of a committee on streets and alleys to make in its behalf and pursuant to its directions a contract for doing work, and also give to the owners of abutting lots the privilege of selecting one of several specified materials, reserving to the chairman of the committee authority to select in case the lot-owners failed.[55] So, also, in the exercise of a like authority, the council may refer applications for the location or alteration of streets to a committee to inquire into the matter and report.[56] And where the council is the sole judge of the election of its members, it may upon a contest appoint a committee to take testimony and to report the facts and evidence to the council.[57]

the care, management, collection or disbursement" of county moneys, the commissioners have power to contract with an expert to examine the county treasurer's accounts: Duncan v. Board &c., 101 Ind. 403; School Town of Milford v. Zeigler, 1 Ind. App. 138; s. c. 27 N. E. 303; Gillett v. Board &c., 67 Ill. 256; City of Alton v. Mulledy, 21 Ill. 76; Stewart v. City of Council Bluffs, 58 Iowa 642; s. c. 12 N. W. 718; State v. Hauser, 63 Ind. 155; Edwards v. City of Watertown, 24 Hun (N. Y.) 426. The English Municipal Corporations Act of 1882, § 22, provides that "the council may appoint out of their body such and so many committees as they think fit, for any purpose which in the opinion of the council would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval." See also, Gregory v. City of Bridgeport, 41 Conn. 76, cited in note 47 to § 286, ante.

[55] Hitchcock v. Galveston, 96 U. S. 341. In the same case it was also held that, if the committee were exercising an unlawful delegation of power, it was competent for the council to ratify their acts. See also, as to ratification, School Town of Milford v. Powner, 126 Ind. 528; s. c. 26 N. E. 484; Salmon v. Haynes, 50 N. J. L. 97; s. c. 11 Atl. 151; Hannibal &c. R. Co. v. Marion Co., 36 Mo. 294. But where the common council was required by charter to cause certain work to be done by contract or otherwise, an ordinance directing the superintendent of streets to "cause the work to be done" was declared to be unauthorized: Birdsall v. Clark, 73 N. Y. 73.

[56] Preble v. City of Portland, 45 Maine 241. It is no objection to a sewer assessment that the mayor and aldermen called in another person to assist them in making it: Collins v. Holyoke, 146 Mass. 298; s. c. 15 N. E. 908. Council may order a sewer to be built by a committee: Dorey v. City of Boston, 146 Mass. 336, 339; s. c. 15 N. E. 897, and cases cited. Where the members of the council have personal knowledge of a fact, they may act without any further or formal inquiry: Bissell v. City of Jeffersonville, 24 How. 287, 296; Main v. Fort Smith, 49 Ark. 480; s. c. 5 S. W. 801; Commonwealth v. City of Pittsburg, 14 Pa. St. 177.

[57] "This is a well-known course of proceeding in every body having power to judge of the election of its own members, in case an election is

§ 290. **Constitution of council.**—In the old English municipal corporations, when the mayor or other chief officer was not present at a corporate assembly, it could transact no business of the corporation, for without his presence at its head no corporate act done was valid.[58] City charters in this country do not always agree in the constituents of the council or governing body. In some cases there is a separate council which is only one of the parts of the city legislature, and requiring the approval of another board or of the mayor acting separately, as the governor does, to complete their action. But most of our cities, in their earlier stages, if not permanently, have had a council where the mayor sits in person and over whose action he has no veto. In all such corporations he has been deemed a member as clearly as the aldermen.[59] Where the charter provided "that the intendant of police shall have a seat in the board of commissioners, and when present shall preside therein; in his absence the board shall appoint a chairman pro tempore," it was held that the intendant was constituted a member of the board.[60] And when the language of the organic act is that "the mayor and councilmen shall have power," etc., the co-ordinate action of both is required before their action can have any binding or obligatory force.[61]

§ 291. **The same subject continued.**—If, however, by a fair construction of the law the body is composed exclusively of trustees or councilmen, the mayor is not a member of the council and has no right to preside or vote therein.[62] It was decided by the United

contested:" Salmon v. Haynes, 50 N. J. L. 97, 100; s. c. 11 Atl. 151. The powers of committees may be revoked by the appointing power or controlled by new members added, who can not be lawfully excluded from participation in their proceedings: Damon v. Inhabitants &c., 2 Pick. (Mass.) 345.

[58] Richards v. Town of Clarksburg, 30 W. Va. 491, 497; s. c. 4 S. E. 774; 20 Am. & Eng. Corp. Cas. 111; Willcock Munic. Corp., §§ 94, 102; Reg. v. Bailiffs, 2 Ld. Raym. 1232. See § 276, ante.

[59] People v. Harshaw, 60 Mich. 200; s. c. 26 N. W. 860, holding that a provision in a charter that "the mayor, recorder and aldermen, when assembled together, shall constitute the common council," makes the mayor a member of the council.

[60] Intendant &c. v. Sorrell, 1 Jones L. (N. C.) 49. Judge Dillon says that "whether the mere fact that a single unauthorized person is by a mistaken construction of the charter allowed to participate in the transactions of a meeting of the council would in this country be held necessarily to avoid them is a question which perhaps remains yet to be settled:" Dillon Munic. Corp., §273, n.

[61] Saxton v. Beach, 50 Mo. 488; Saxton v. City of St. Joseph, 60 Mo. 153.

[62] Cochran v. McCleary, 22 Iowa 75. See also, Reynolds v. Baldwin, 1 La. An. 162; Commonwealth v. Kepner, 10 Phila. (Pa.) 510; Achley's Case, 4 Abb. Pr. (N. Y.) 35. Where a charter provided that the "common council shall consist of the

States circuit court that under a statute providing for the appointment and qualification of a board of tax commissioners to consist of a definite number, the board was not in existence until all had duly qualified, and the proceedings of a majority were therefore of no validity.[63] A change in the membership of a board pending proceedings before it does not require that the matters be taken up de novo. Thus, a county commissioner may act with his associates in steps preliminary to laying out a way, and his successor may afterwards act in his place in completing the proceedings, where the acts of the former are separable from those of the latter.[64]

§ 292. Conflicting councils—Kerr v. Trego.—Where two bodies claim to be regularly organized as the common council of a city, and each is proceeding to act as such, to the great detriment of the public interests, may the wrongful body be restrained from acting by means of the equity remedy of injunction? This was the question which arose and was determined by the supreme court of Pennsylvania in Kerr v. Trego.[65] An ordinance of the common council of Philadelphia provided that the clerk and assistant clerk elect should continue in office until the organization of a new council (after an election) and until their sucessors should be duly elected, and it appeared

mayor and aldermen," etc., and that a vote to levy a certain tax should be passed by two-thirds vote of the "members elect," it was held that the mayor was not entitled to vote to make up the two-thirds: Mills v. Gleason, 11 Wis. 470.

[63] Schenck v. Peay, 1 Woolw. 175. But see Hartshorn v. Schoff, 58 N. H. 197.

[64] "The board are a court, and the court is not dissolved by one commissioner going out and another coming in. It continues to be the same court though its personality be changed:" Chapman v. County Com'rs, 79 Maine 267, 269; s. c. 9 Atl. 728. As to the common mode of organizing a municipal body where part of its members are constantly in office, and some new members are annually infused, see Kerr v. Trego, 47 Pa. St. 292. Under Pa. act of 1887, § 4, providing for certain new executive officers in cities, "which shall be chosen by city councils," the existing council at the time of change should choose such officers: Commonwealth v. Wyman, 137 Pa. St. 508; s. c. 21 Atl. 389. Where two justices of the peace "whose terms will soonest expire" were constituted members of a board, it was not necessary that the record should show affirmatively that the two justices present fulfilled the requirement. If they appeared and acted, the presumption is that they were entitled to sit as members: Newaygo Co. Mfg. Co. v. Echtinaw, 81 Mich. 416; s. c. 45 N. W. 1010. Where the members of a common council sit as a court to try charges against an officer, if one of their number presides over the tribunal he has a right to vote upon the question of guilt in the absence of any statute or ordinance to the contrary: Asbell v. Mayor &c., 80 Ga. 503; s. c. 5 S. E. 500.

[65] 47 Pa. St. 292.

that on the day and at the hour appointed by law for the organization of the new council there were present twenty-three members whose terms had yet one year to run, among whom was the president of the preceding year. The clerk and president were in their usual places and proceeded first to call the roll of all the members whose terms of office had not yet expired, and then to call on the new members to present their certificate of election that their names might be enrolled. Further business was interrupted by the disorderly conduct of the new members, who proclaimed one of their number as president, and at a subsequent meeting assumed to act as the lawful common council. The court held, 1. That there was a wrong subject to redress by judicial power; 2. That injunction was the appropriate remedy; 3. That one of the conflicting bodies might maintain the action against the other, the attorney-general not having the sole right to file such a bill; 4. That the maintenance of the regular forms of organization was the test of right; 5. That the mode of organization by the members who continued in office was legitimate and according to common usage; 6. That an intention by the complainants to use their power fraudulently did not defeat their right to the injunction. The opinion of the court is interspersed with wise and liberal observations in respect of the proper limits of judicial interference in cases of this kind, and is strongly supported by the temperate judgment of Judge Dillon.[66]

§ 293. **Acts of de facto councils.**—In applying the principle that the acts of de facto officers, properly so called, are valid, no distinction is made between officers whose duties are executive or administrative and those who compose the council or other municipal legislative body.[67] But an office which has no de jure existence can not

[66] Dillon Munic. Corp., § 275, n. See, however, In re Sawyer, 124 U. S. 200; s. c. S. Ct. 482, and the dissenting opinion of Chief Justice Waite; Demarest v. Wickham, 63 N. Y. 320; High Injunctions, § 1312.

[67] Roche v. Jones, 87 Va. 484; s. c. 12 S. E. 965; De Grave v. Mayor &c., 4 Car. & P. 111; State v. Jacobs, 17 Ohio 143; Williams v. Inhabitants &c., 21 Pick. (Mass.) 75; Scovill v. City of Cleveland, 1 Ohio St. 126; Trustees &c. v. Hills, 6 Cowen (N. Y.) 23; People v. Runkle, 9 Johns. (N. Y.) 147; People v. Bartlett, 6 Wend. (N. Y.) 422; People v. Stevens, 5 Hill (N. Y.) 616; Pritchett v. People, 6 Ill. 525; Cochran v. McCleary, 22 Iowa 75, 84; Town of Decorah v. Bullis, 25 Iowa 12; Carland v. Commissioners &c., 5 Mont. 579; s. c. 6 Pac. 24; State v. Goowin, 69 Tex. 55; s. c. 5 S. W. 678 (where a municipal election ordered by de facto mayor and aldermen was declared valid); Dugan v. Farrier, 47 N. J. L. 383; s. c. 1 Atl. 751 (where a member of the board who was ineligible to the office of president claimed the right to preside and assumed the chair. The board acquiesced and proceeded to appoint a

have a de facto incumbent.[67a] Accordingly, where a town attempted to reorganize under an act which did not apply to it, a new council differently constituted from that of the old corporation was declared to have no power to pass a valid ordinance.[68] Where a county court was abolished by act of the legislature and its powers transferred to a board of county commissioners, who proceeded to issue bonds under their new authority, and the statute was subsequently held to be unconstitutional, the bonds were without validity even in the hands of bona fide holders.[69]

§ **294. Quorum of definite body.**—"The quorum of a body may be defined to be that number of the body which when assembled in their proper place will enable them to transact their proper business, or, in other words, that number that makes the lawful body, and gives them the power to pass a law or ordinance."[70] When the statute law creating it is silent as to what shall constitute a legal assembly of a definite body, the common law, both in England and in this country, is well settled that the majority of the members elect shall constitute a legal body.[71] This rule of the common law can not be

county collector. The action of the board was sustained); Spaulding v. City of Saginaw, 84 Mich. 134; s. c. 47 N. W. 444; In re Strahl, 16 Iowa 369. See also, Koontz v. Burgess &c., 64 Md. 134; s. c. 20 Atl. 1039; Lockhart v. City of Troy, 48 Ala. 579; Rex v. Mayor &c., 8 Mod. 111; People v. Hopson, 1 Denio (N. Y.) 574; People v. Nostrand, 46 N. Y. 375; Hamlin v. Dingman, 5 Lans. (N. Y.) 61; Olmsted v. Dennis, 77 N. Y. 378; Riddle v. Bedford Co., 7 S. & R. (Pa.) 386; Lever v. McGlachlin, 28 Wis. 364; Cushing v. Frankfort, 57 Maine 521. As to appointment of an officer by less than a quorum, see § 296, post. It was held in a well considered case in England that an act done by a definite body was not invalid because officers de jure and officers de facto united in the doing of it: Scadding v. Lorant, 5 Eng. L. & Eq. 16. See and compare: Intendant &c. v. Sorrell, 1 Jones L. (N. C.) 49; Willcock Munic. Corp., § 68; Parry v. Berry, 1 Comyns 269; Green v. Mayor &c., 1 Burr. 127; Rex v. Westwood, 4 B. & C. 781, 799, 818; Rex v. Head, 4 Burr. 2515; Hoblyn v. King, 6 Bro. P. C. 511.

[67a] Burt v. Winona &c. R. Co., 31 Minn. 472; s. c. 18 N. W. 285, 289; Tinsley v. Kirby, 17 S. C. 1, 8; Carleton v. People, 10 Mich. 249; People v. White, 24 Wend. (N. Y.) 520, 540; Welch v. Ste. Genevieve, 1 Dillon 130; Hildreth's Heirs v. McIntire's Devisees, 1 J. J. Marsh. (Ky.) 206. Cf. State v. Carroll, 38 Conn. 449; § 184, ante.

[68] Town of Decorah v. Bullis, 25 Iowa 12 (by Dillon, C. J.).

[69] Norton v. Shelby Co., 118 U. S. 425; s. c. 6 S. Ct. 1121. See § 184, ante.

[70] Heiskell v. Mayor &c., 65 Md. 125, 149; s. c. 4 Atl. 116.

[71] Heiskell v. Mayor &c., 65 Md. 125; s. c. 4 Atl. 116; Blacket v. Blizard, 9 B. & C. 851; Barnert v. Mayor &c., 48 N. J. L. 395; s. c. 16 Atl. 15; State v. Farr, 47 N. J.

abrogated by an act of the municipal body itself, unauthorized by statute or charter:[72] it can neither enlarge nor diminish the number required to constitute a quorum. Thus, in the case already cited, where one of the co-ordinate branches of a city council adopted a rule prohibiting action unless two-thirds of its members were present, it was held that an ordinance might be repealed at a meeting consisting of a majority only, and this although the charter contained a provision authorizing those bodies "to settle their rules of procedure."[73] Where a statute provides that a majority of the members elected shall be a quorum, the removal of an alderman from his ward is to be deemed a resignation, after which a quorum will consist of a majority of the remaining members.[74] Where the mayor has a right to vote only in case of a tie, he is not to be counted a member in determining whether a quorum is present.[75] Where the rules may be suspended by a three-fourths vote, four out of six may suspend, one of the latter having resigned and one being absent.[76] It is immaterial that some of the town trustees voting were ineligible where the vote was unanimous and the quorum was composed of eligible persons.[77]

L. 208; s. c. 4 Atl. 323; State v. Miller, 45 N. J. L. 251; 5 Dane Abr. 150; Dartmouth v. County Com'rs, 153 Mass. 12; s. c. 26 N. E. 425; Ex parte Willocks, 7 Cowen (N. Y.) 402, 410; Rex v. Devonshire, 1 B. & C. 609; Rex v. Headley, 7 B. & C. 496; Rex v. Bellringer, 4 T. R. 810; Rex v. Bower, 1 B. & C. 492. One who has a right to vote only in case of a tie can not be counted in determining whether there is a quorum present: State v. Porter, 113 Ind. 79; s. c. 14 N. E. 883. In the New England towns, where the corporate power is primarily exercised by the citizens at large, any number, though less than a majority of the whole, when assembled at a legal meeting, have the power to act for the whole, unless otherwise provided by law: Damon v. Inhabitants &c., 2 Pick. (Mass.) 345, 355; Commonwealth v. Inhabitants &c., 2 Pick. (Mass.) 70; State v. Binder, 38 Mo. 450; Madison &c. Church v. Baptist Church, 5 Robt. (N. Y.) 649; Williams v. Inhabitants &c., 21 Pick. (Mass.) 75; Inhabitants &c. v. Stearns, 21 Pick. (Mass.) 148.

[72] "Of the power of the general assembly to fix and determine what should be a quorum there can be no possible doubt:" Heiskell v. Mayor &c., 65 Md. 125, 147; s. c. 4 Atl. 116.

[73] "It would be an anomaly indeed," said the court, "if the council itself could deprive itself of the right that it admittedly had:" Heiskell v. Mayor &c., 65 Md. 125, 152; s. c. 4 Atl. 116.

[74] State v. Orr, 61 Ohio St. 384; s. c. 56 N. E. 14.

[75] City of Somerset v. Smith, 20 Ky. L. 1488; s. c. 49 S. W. 456.

[76] City of North Platte v. North Platte Water Works Co., 56 Neb. 403; s. c. 76 N. W. 906.

[77] Lewis v. Town of Brandenburg, 20 Ky. L. 1011; s. c. 47 S. W. 832; 48 S. W. 978. As to what constitutes a quorum, and validity of acts of council, see State v. Yates, 19 Mont. 239; s. c. 47 Pac. 1004; Collopy v. Cloherty, 18 Ky. L. 1061; s. c. 39 S. W. 431; Tappan v. Long

§ 295. The same subject continued.—But it is also essential to the validity of action upon a proposition submitted to the board that a majority of all the members qualified to vote in the particular instance shall be present; and members having a direct pecuniary interest in the matter adverse to the municipality which they represent are excluded in counting a quorum.[78] The physical presence of a sufficient number constitutes a legal quorum. Thus, where half of the members of a board in regular session for the purpose of choosing an officer, after several hundred ineffectual ballots, withdrew from the place of balloting and took places among the bystanders, but without leaving the room, it was held that the quorum was not broken, although they refused to vote and protested against further action.[79]

§ 296. The same subject continued—An exception to the rule.—The principle that upholds the acts of de facto officers prevails over the rule requiring the presence of a quorum for the transaction of business by public bodies. The charter of the city of Detroit provides for the designation by the common council of the aldermen in each ward to the election districts therein, and also for the appointment of qualified electors in each district, who with the aldermen shall act as chairmen respectively of the board of inspectors and of registration in these districts. These appointments must be made at least two weeks previous to a general election. At the last meeting of the council prior to a general election when these appointments could lawfully be made, the minority faction of the council withdrew, and the majority, though not constituting a quorum, pro-

Branch &c., 59 N. J. L. 371; s. c. 35 Atl. 1070. A resolution adopted at a meeting when a majority of the whole number of the council is not present is void under code of Iowa: Cascaden v. City of Waterloo, 106 Iowa 673; s. c. 77 N. W. 333.

[78] "Perhaps the only recognized exception to this rule is the case where the body or board is permitted to fix the compensation of its members: Board &c. v. Hall, 47 Wis. 208; s. c. 2 N. W. 291; Pickett v. School Dist., 25 Wis. 551; United Brethren Church v. Vandusen, 37 Wis. 54; Walworth Bank v. Farmers' Loan &c. Co., 16 Wis. 629; Coles v. Trustees &c., 10 Wend. (N. Y.) 659. The distinction between a remote and a direct interest is clearly set forth by Judge Cooley in Steckert v. City of East Saginaw, 22 Mich. 104. As a general rule acts done by less than a quorum are void: State v. Trustees &c., 22 Ohio St. 288; Pimental v. City of San Francisco, 21 Cal. 351; McCracken v. City of San Francisco, 16 Cal. 591; City of Logansport v. Legg, 20 Ind. 315; Ferguson v. Crittenden Co., 6 Ark. 479; Price v. Grand Rapids &c. R. Co., 13 Ind. 58. As to presumptions in favor of a quorum, see Citizens' &c. Ins. Co. v. Sortwell, 8 Allen (Mass.) 217 (private corporations).

[79] State v. Vanosdal, 131 Ind. 388; s. c. 31 N. E. 79. See Beach Priv. Corp., §§ 276, 295.

ceeded to make the appointments. The court held that the acts of the officers thus appointed were valid, as they were officers de facto, but that the council would be compelled by mandamus to designate immediately, at a lawful meeting, the chairmen of the different boards of inspectors to take the place of those illegally appointed at the former meeting.[80]

§ 297. The same subject continued—Special charter provisions.—Where a charter provided that no ordinance or resolution should be passed except by a majority of all the members elected, and one of the members resigned after election, it was held that a bare majority of those remaining was not empowered to act.[81] But if the majority is constituted a quorum to do business "at all meetings" of the board, such a number may organize and act at the first meeting, as well as at any subsequent meeting, although it is provided that "the board," etc., shall assemble for the purpose of organization.[82] The power of removing certain officers was conferred upon a city council, to be exercised "by a vote of two-thirds of that body," and the court inclined to the opinion that (aside from the French text of the charter, which disposed of any doubt) only two-thirds of the body as legally constituted by the presence of a quorum was required.[83] But where the language was that "the common council, with the concurrence of two-thirds of the members thereof," might order, etc., two-thirds of the whole number was declared necessary to make a valid order.[84] And where a charter requires a two-thirds vote of the members of a council on certain measures, and the body is composed of a president and six others, five members must concur.[85]

§ 298. Quorums and majorities further considered—The rule in England.—It is not yet settled by the authorities whether the business of a common council or other governing board can be conducted by a bare majority of the number necessary to constitute a quorum, or whether the passage of a measure requires the assent of a majority

[80] Dingwall v. Common Council, 82 Mich. 568; s. c. 46 N. W. 938. See also, as to acts of de facto councils, § 293, ante; and of de facto officers and agents generally, § 291, ante.

[81] City of San Francisco v. Hazen, 5 Cal. 169; McCracken v. City of San Francisco, 16 Cal. 591; Pimental v. City of San Francisco, 21 Cal. 351.

[82] City of Oakland v. Carpentier, 13 Cal. 540.

[83] Warnock v. City of Lafayette, 4 La. An. 419.

[84] City of Logansport v. Legg, 20 Ind. 315. See also, State v. Porter, 113 Ind. 79; s. c. 14 N. E. 883.

[85] Whitney v. Common Council &c., 69 Mich. 189; s. c. 37 N. W. 184; 30 Am. & Eng. Corp. Cas. 453, n.

of those present where more than a quorum are in attendance. Baron Martin, in delivering his opinion in Gosling v. Veley,[86] adopted and explained a remark by Lord Mansfield[87] suggesting a distinction between elections and the transaction of other corporate business. "It is clear law," said the baron, " * * * that for the transaction of business,—namely, making a law, imposing a tax, making a by-law, in fact, transacting any business whatever,—there must be, first, a lawful meeting, and secondly, a vote of the majority; and unless the majority votes for the law, tax or by-law, it is not carried." And it was accordingly held that a valid church rate could not be made at a vestry meeting where the majority of those present refrained from voting.[88]

§ 299. The same subject continued—Decisions in the United States.—The distinction noticed in the preceding section has been recognized and applied in election cases by the supreme courts of Ohio[89] and Illinois.[90] In a recent case in Indiana[91] it appeared that a resolution was introduced at a meeting of a common council for the adoption of the report of a committee relating to lighting the city. Three of the six members composing the council, all being present, voted in favor of the resolution, but the other three declined to vote, and the mayor declared that it was adopted. The court sustained this view, and said: "The rule is that where there is a quorum present, and a majority of the quorum vote in favor of a measure, it will prevail, although an equal number should refrain from voting. It is not the majority of the whole number of members present that is required; all that is requisite is a majority of the number of members required to constitute a quorum."[92] The same doctrine is

[86] 4 H. L. Cas. 679, 740.

[87] In Rex v. Monday, Cowp. 530, 538.

[88] Gosling v. Veley, 4 H. L. Cas. 679.

[89] State v. Green, 37 Ohio St. 227.

[90] Launtz v. People, 113 Ill. 137.

[91] Rushville Gas Co. v. City of Rushville, 121 Ind. 206; s. c. 23 N. E. 72; 6 L. R. A. 315.

[92] Rushville Gas Co. v. City of Rushville, 121 Ind. 206; s. c. 23 N. E. 72; 6 L. R. A. 315. The court continued:—"If there had been four members of the common council present, and three had voted for the resolution and one had voted against it, or had not voted at all, no one would hesitate to affirm that the resolution was duly passed; and it can make no difference whether four or six members are present, since it is always the vote of the majority of the quorum that is effective. The mere presence of inactive members does not impair the right of the majority of the quorum to proceed with the business of the body. If members present desire to defeat a measure they must vote against it, for inaction will not accomplish their purpose. Their silence is acquiescence, rather than opposition. Their refusal to vote is, in effect, a declaration that they consent that the ma-

affirmed in New Hampshire;[93] while in Tennessee[94] the opposite extreme is reached in holding that a majority of all present is necessary even to a valid election.

§ 300. **Further application of majority principle.**—Where authority to do an act of a public nature is given by law to three or more persons, if the act is merely ministerial in its character, a majority at least must concur and unite in the performance of it; but they may act separately and need not be convened in a body or notified so to convene for that purpose; but if the act is one which requires the exercise of discretion and judgment, in which case it is usually termed a judicial act, unless special provision is otherwise made, the persons to whom the authority is given must meet and confer together and be present when the act is performed, in which case a majority may perform the act, or, after all have been notified to meet, a majority having met will constitute a quorum or sufficient number to perform the act. As a general rule, the act may then be legally done by the direction or with the concurrence of a majority of the quorum so assembled.[95]

jority of the quorum may act for the body of which they are members." Judge Dillon, in referring to this case, says:—"It deserves further consideration whether this result is consistent with the majority rule applicable to definite bodies:" Dillon Munic. Corp. (4th ed.), § 292, n. The court is silent as to any distinction between elections and business proceedings, although it cites cases in support of its decision where the difference was clearly recognized.

[93] Attorney-General v. Shepard, 62 N. H. 383.

[94] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 6 L. R. A. 308; 17 Am. St. 870.

[95] Martin v. Lemon, 26 Conn. 192; Damon v. Inhabitants &c., 2 Pick. (Mass.) 345, 354, which makes a distinction between committees appointed by a public corporation of its own members and committees of persons not members, requiring unanimity in the latter case; Ballard v. Davis, 31 Miss. 525; Petrie v. Doe, 30 Miss. 698; Crindley v. Barker, 1 Bos. & P. 229; Keeler v. Frost, 22 Barb. (N. Y.) 400; Perry v. Tynen, 22 Barb. (N. Y.) 137; In re Rogers, 7 Cowen (N. Y.) 526; Astor v. New York, 62 N. Y. 567, 576, 580; In re Beekman, 31 How. Pr. (N. Y.) 16; In re Sewer in Thirty-fourth St., 31 How. Pr. (N. Y.) 42. Upon the death of one, where no provision exists for filling the vacancy, the power vests in the survivors: People v. Mayor &c., 63 N. Y. 291; citing People v. Palmer, 52 N. Y. 84; and distinguishing People v. Nostrand, 46 N. Y. 375. The presumption is that all were notified and that all met: Astor v. Mayor &c., 62 N. Y. 567, 576; Young v. Buckingham, 5 Ohio 485, 489; Charles v. Mayor &c., 27 N. J. L. 203. See also, Jones v. Inhabitants &c., 9 Pick. (Mass.) 146; Inhabitants &c. v. Cole, 3 Pick. (Mass.) 232, 244; Keyes v. Inhabitants &c., 17 Pick. (Mass.) 273; Kingsbury v. School Dist., 12 Met. (Mass.) 99; Crommett v. Pearson, 18 Maine 344; Jenkins v. School Dist., 39 Maine 220; Green v. Miller, 6 Johns. (N. Y.)

§ 301. Execution of authority vested in two persons. — Where power is conferred upon two persons, or where a larger number has by death or vacancy become reduced to two, nothing can be done without the consent of both.[96] Such is the general rule; yet there are authorities which hold clearly that to prevent a failure of justice one may act alone without consulting the other; as, if one be dead or interested or absent when immediate action is necessary.[97] Moreover, the common presumption in favor of the performance of official duty dispenses with affirmative proof that the act of one was assented to by the other, and it has been held that this presumption can be rebutted only by the testimony of him whose assent was denied.[98] So far, also, as their duties are ministerial, it is competent for one to act as the agent or deputy of both with the other's consent; which is only an application of the general rule that one of a board may be authorized to act in behalf of the whole in the execution of whatever measure they may resolve upon.[99]

§ 302. Presiding officer.—In England[100] and generally in the United States it is one of the duties of the mayor to preside at cor-

39; King v. Beeston, 3 T. R. 592; Guthrie v. Armstrong, 5 B. & Ald. 628; Keyser v. School Dist., 35 N. H. 477; Wolcott v. Town of Wolcott, 19 Vt. 37; Throop Public Officers, § 106; McCoy v. Curtice, 9 Wend. (N. Y.) 17, 19; Horton v. Harrison, 23 Barb. (N. Y.) 176; State v. Guiney, 26 Minn. 313; s. c. 3 N. W. 977; Schenck v. Peay, 1 Woolw. 175, 187; People v. Harrington, 63 Cal. 257; Walker v. Rogan, 1 Wis. 597; In re Broadway Widening, 63 Barb. (N. Y.) 572; Downing v. Rugar, 21 Wend. (N. Y.) 178; Somerset Co. v. Parson, 105 Pa. St. 360; Cooper v. Lampeter Tp., 8 Watts (Pa.) 125; Commonwealth v. Commissioners, 9 Watts (Pa.) 466, 471; Baltimore Turnpike, 5 Binn. (Pa.) 481; Commissioners v. Leckey, 6 S. & R. (Pa.) 166; McCready v. Guardians, 9 S. & R. (Pa.) 94; Caldwell v. Harrison, 11 Ala. 755; Crist v. Brownsville Tp., 10 Ind. 461; Gallup v. Tracy, 25 Conn. 10, holding that a town committee to stake out oyster grounds, having no fixed place of acting or consulting, no record, no clerk, and no time and mode of proceeding, need not be assembled to act, and may act by a majority of such as are competent.

[96] Downing v. Rugar, 21 Wend. (N. Y.) 178; Pell v. Ulmar, 21 Barb. (N. Y.) 500; New York Life Ins. Co. v. Staats, 21 Barb. (N. Y.) 570; Perry v. Tynen, 22 Barb. (N. Y.) 137; Powell v. Tuttle, 3 N. Y. 396.

[97] 6 Vin. Abr., tit. Coroner (H.), pl. 7; 14 Vin. Abr., tit. Joint and Several (B.), pl. 1; Rex v. Warrington, 1 Salk. 152; Naylor v. Sharpless, 2 Mod. 23. And see Auditor Curle's Case, 11 Coke 2; Rich v. Player, 2 Show. 262; Downing v. Rugar, 21 Wend. (N. Y.) 178, 183.

[98] Downing v. Rugar, 21 Wend. (N. Y.) 178.

[99] Downing v. Rugar, 21 Wend. (N. Y.) 178; People v. Commissioners, 3 Hill (N. Y.) 599. See also, People v. Newell, 13 Barb. (N. Y.) 86; s. c. rev'd 7 N. Y. 9, but not on this point. See § 286 et seq., ante, on delegation of powers.

[100] "Prior to the Municipal Corpo-

porate meetings; but he has not, in virtue of his office alone, any right to preside, which in all cases depends upon a construction of the charter, organic law or constituent act of the corporation.[101] When the charter provides that the city council shall elect one of their number to be the president of the board, but does not prescribe the number of votes necessary to a choice, the votes of a majority of a quorum duly met are sufficient.[102] The presiding officer, although he be the mayor, can not vote unless he is a member of the body, or is authorized by the charter to give the casting vote in case of a tie.[103] A right to preside over the meeting of the council is a "franchise," and if denied, a remedy may be had by quo warranto or information in that nature; but a bill in equity is not a proper proceeding for that purpose unless so provided by statute.[104] Where the statute

rations Act of 1835 the powers and duties of mayors, including the right to preside, depended upon charters, regal and parliamentary, usages, customs, etc.:" Dillon, J., in Cochran v. McCleary, 22 Iowa 75, 82; citing 4 Jacob's Law Dict. 264, 265; 2 Bouv. Law Dict. 150.

[101] Cochran v. McCleary, 22 Iowa 75.

[102] State v. Farr, 47 N. J. L. 208; s. c. 4 Atl. 323. In Dugan v. Farrier, 47 N. J. L. 383; s. c. 1 Atl. 751, the point was raised that the organization of the board, including the selection of a presiding officer, is essential to the valid exercise of its other functions, but the question was left undetermined by the court.

[103] City of Carrollton v. Clark, 21 Ill. App. 74; Launtz v. People, 113 Ill. 137; s. c. 55 Am. R. 405; Carroll v. Wall, 35 Kan. 36; s. c. 10 Pac. 1; Carleton v. People, 10 Mich. 250; Town of Decorah v. Bullis, 25 Iowa 12; People v. White, 24 Wend. (N. Y.) 520; State v. Gray, 23 Neb. 365; s. c. 36 N. W. 577; Hildreth v. McIntire, 1 J. J. Marsh. (Ky.) 206; Rex v. Westwood, 4 B. & C. 781, 799; Rex v. Head, 4 Burr. 2515; Rex v. Croke, Cowp. 26; Green v. Mayor &c., 1 Burr. 127, 131; Parry v. Berry, Comyns 269. Where the charter makes the president a member of the council with the right to vote in every case and a casting vote in case of a tie, he may vote on a question and give an additional vote if there is a tie: Whitney v. Common Council &c., 69 Mich. 189; s. c. 37 N. W. 184; 30 Am. & Eng. Corp. Cas. 453, n.

[104] Cochran v. McCleary, 22 Iowa 75, where the question is discussed by Judge Dillon; Commonwealth v. Arrison, 15 S. & R. (Pa.) 127, 130; In re Sawyer, 124 U. S. 200; s. c. 8 S. Ct. 482; Reynolds v. Baldwin, 1 La. An. 162, where the right of a recorder of a municipality, who was ex officio president of its council, to vote in cases where there was not a tie, was tested on quo warranto; Rex v. Mayor &c., 1 Ld. Raym. 426; Commonwealth v. Kepner, 10 Phila. (Pa.) 510; Tappan v. Gray, 7 Hill (N. Y.) 259; Commonwealth v. Commercial Bank, 28 Pa. St. 383, 389; Southern Plank R. Co. v. Hixon, 5 Ind. 165; Markle v. Wright, 13 Ind. 548; People v. Utica Ins. Co., 15 Johns. (N. Y.) 358; Attorney-General v. Utica Ins. Co., 2 Johns. Ch. (N. Y.) 371; People v. Carpenter, 24 N. Y. 86; People v. Cook, 8 N. Y. 67; People v. Draper, 15 N. Y. 532; Peabody v. Flint, 6 Allen (Mass.) 52; Mozley v. Alston, 1 Phill. 790; Lord v. Governor &c., 2 Phill. 740; Hagner v. Heyberger, 7 W. & S. (Pa.)

requires all appointments of city officers to be made by a majority vote of the whole number elected, in case of a tie the mayor has no right to cast the deciding vote.[105] Where the charter makes the mayor a member of the council its action in dismissing a public officer does not require the consent of the mayor.[106] A statute making a member of the council ineligible to any office, employment or agency chosen directly by the council, does not prevent the council from electing one of its members to fill a vacancy in the office of mayor, where such member has resigned before the expiration of his term.[107]

§ **303. The same subject continued.**—The functions of the presiding officer are as official as any part of the meeting of the board, and can not be exercised by one who is not a member.[108] It is his duty to announce the result of a vote according to the fact, and his decision may be attacked collaterally;[109] and mandamus will lie to compel him to reverse his decision illegally declaring a resolution carried, and to declare it lost, unless the resolution is itself illegal upon its face.[110] He can not arbitrarily adjourn a meeting in defiance of the majority present.[111] When the mayor has a right to appoint by and with the consent of the council and also to vote in case of a tie, he may give a casting vote to confirm his own appointment.[112] And the declaration of a presiding officer that a resolution is

104; Demarest v. Wickham, 63 N. Y. 320; Hughes v. Parker, 20 N. H. 58; Ex parte Strahl, 16 Iowa 369; Updegraff v. Crans, 47 Pa. St. 103; Facey v. Fuller, 13 Mich. 527. The remedy (by quo warranto) does not exist as a matter of right, and in offices of short duration there is not much to favor interference in ordinary cases: People v. Harshaw, 60 Mich. 200; s. c. 26 N. W. 879, where it was held that a charter providing that the common council should have power to determine contested elections of its members made the decision of that body conclusive and not subject to review.

[105] State v. Alexander, 107 Iowa 177; s. c. 77 N. W. 841.

[106] Doherty v. City of Galveston, 19 Tex. Civ. App. 708; s. c. 48 S. W. 804.

[107] Commonwealth v. Corcoran, 9 Kulp (Pa.) 507. Under Starr & Curtis Ann. Stat. Ill., ch. 24, art. 2, § 4, the council has no power to elect a mayor pro tem. when the mayor is absent from a council meeting on account of sickness, though not absent from the city: Blair v. People, 181 Ill. 460; s. c. 54 N. E. 1024. When mayor a constituent part of council,—see State v. Yates, 19 Mont. 239; s. c. 47 Pac. 1004.

[108] State v. Kirk, 46 Conn. 395, 398.

[109] City of Chariton v. Holliday, 60 Iowa 391; s. c. 14 N. W. 775; State v. Fagan, 42 Conn. 32.

[110] Tennant v. Crocker, 85 Mich. 328; s. c. 48 N. W. 577. But the remedy by mandamus is discretionary, and in this case it was denied on account of the patent illegality of the resolution.

[111] Dingwall v. Common Council &c., 82 Mich. 568; s. c. 46 N. W. 938.

[112] Carroll v. Wall, 35 Kan. 36; s. c. 10 Pac. 1.

adopted has been held to be a casting vote in its favor, if the other votes are equally divided;[113] otherwise, where the vote is required to be by ballot.[114] When the chairman announces the appointment of a secretary in the presence of the meeting, and the secretary serves without objection from any one, the act of the chairman is the act of the meeting.[115] Where the president of the board is vested with power to appoint a committee and does so his action is not nullified by a resolution of the board continuing an old committee.[116]

§ 304. Commitment for contempt—Whitcomb's case.—By the law of England a town or city council had no power without express act of parliament to commit for contempt of its authority.[117] The only case directly in point in this country, so far as the author's reading goes, is Whitcomb's case,[118] decided in 1876 by the supreme judicial court of Massachusetts. A witness having been duly summoned to testify before a special committee of the common council of Boston, appointed with full powers to investigate and report upon certain charges of corruption against its members, declined to answer a question relating to the matter, and was committed for contempt by a regular order of the council. It was held that the council was neither a legislature nor a court, nor in the accurate use of language was it vested with any judicial functions whatever, although the charter gave it authority to decide upon all questions relative to the qualifications, election and returns of its members, and that a statute conferring power to imprison and punish without right of appeal or trial by jury was unconstitutional.[119]

[113] Launtz v. People, 113 Ill. 137; Rushville Gas Co. v. City of Rushville, 121 Ind. 206; s. c. 23 N. E. 72; 6 L. R. A. 315. Contra, Hornung v. State, 116 Ind. 458; s. c. 19 N. E. 151, where a candidate, being a member of the board, voted for himself, thus making a tie, and the chairman, erroneously assuming that the vote was valid, declared him elected, and there was no dissent.

[114] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 6 L. R. A. 308; 17 Am. St. 870. Cf. Small v. Orne, 79 Maine 78; s. c. 8 Atl. 152, where, under a particular statutory provision, a declaration by the presiding officer was deemed a casting vote, though the voting was by ballot.

[115] State v. McKee, 20 Or. 120; s. c. 25 Pac. 292.

[116] Buckton v. People, 12 Colo. App. 86; s. c. 54 Pac. 871.

[117] Grant Corp. 84–86; Parke, B., in Kielley v. Carson, 4 Moore P. C. 63, 89; Barter v. Commonwealth, 3 P. & W. (Pa.) 253.

[118] 120 Mass. 118.

[119] Whitcomb's Case, 120 Mass. 118. See also, In re Mason, 43 Fed. 510, which holds that the power to punish for contempt is not an incident to the mere exercise of judicial functions. In In re Hammel, 9 R. I. 248, upon habeas corpus it appeared that the petitioner was summoned to testify before a town council on a matter pending before that body, and, refusing to take an oath or affirma-

§ **305. Yeas and nays.**—A provision in a charter that the yeas and nays "shall" be called and published was held by the supreme court of New York to be directory merely and not indispensable to the validity of a vote.[120] But the weight of authority and reason is decidedly in favor of the view that such a provision is mandatory, and that proceedings in contravention thereof are void.[121] And where the record showed the names of those present at the opening of the meeting, and that a certain resolution was "adopted unanimously on call," it was declared to be an insufficient compliance with a requirement that the votes "shall be entered at large on the

tion, he was ordered to be committed to jail for contempt of court. The proceeding was declared to be illegal for the reason that no definite term of punishment was named. The court cited no authorities and expressly refrained from passing upon "other questions raised." A city charter gave a committee of the common council power to issue a summons to any person to appear and testify in any matter pending before it, and provided a penalty of imprisonment for refusal to obey the summons or to "answer any proper or pertinent question," but contained no express provision authorizing the committee to compel the production of books and papers. It was held that there was no power to commit for contempt for refusing to produce them: People v. Van Tassel, 19 N. Y. S. 643; s. c. 64 Hun (N. Y.) 444; affirming s. c. 17 N. Y. S. 938.

[120] Striker v. Kelly, 7 Hill (N. Y.) 9; s. c. affirmed 2 Denio (N. Y.) 323.

[121] Steckert v. City of East Saginaw, 22 Mich. 104 (where Judge Cooley said:—"The purpose, among other things, is to make the members of the common council feel the responsibility of their action when these important measures are upon their passage, and to compel each member to bear his share in the responsibility by a record of his action which should not afterwards be open to dispute"); Town of Olin v. Meyers, 55 Iowa 209; s. c. 7 N. W. 509; Cutler v. Town of Russellville, 40 Ark. 105; s. c. 4 Am. & Eng. Corp. Cas. 414; Tracey v. People, 6 Colo. 151; s. c. 4 Am. & Eng. Corp. Cas. 373; Rich v. City of Chicago, 59 Ill. 286; Morrison v. Lawrence, 98 Mass. 219; Sullivan v. City of Leadville, 11 Colo. 483; s. c. 18 Pac. 736; City of Logansport v. Dykeman, 116 Ind. 15; s. c. 17 N. E. 587 (where, however, the reason for the rule was held not to apply); Coffin v. City of Portland, 43 Fed. 411. See also, Spangler v. Jacoby, 14 Ill. 297; Supervisors &c. v. People, 25 Ill. 163; McCormick v. Bay City, 23 Mich. 457 (holding that a provision requiring ordinances to be passed by "a majority of all the aldermen," that is, of all the members elect, would necessitate the recording of the number if not the names of the voters on each side); City of Delphi v. Evans, 36 Ind. 90. In such cases a single vote by yeas and nays on several ordinances grouped together is not a passage of any of them: Sullivan v. Pausch, 5 Ohio C. C. 196. The New York case (Striker v. Kelly, 7 Hill (N. Y.) 9) is cited and approved in City of St. Louis v. Foster, 52 Mo. 513; but here the yeas and nays were not required and the cases are easily distinguishable. City of Indianola v. Jones, 29 Iowa 282; In re Carlton Street, 16 Hun (N. Y.) 497; In re Mount Morris Square, 2 Hill (N. Y.) 14, 20; Elmendorf v. Mayor &c., 25 Wend. (N. Y.) 693.

minutes."[122] But the omission may be supplied by an order nunc pro tunc causing the entry to be made.[123] If the record fails to disclose that any other members were present than those who voted "yea," it need not state that the nays were called for.[124] A charter providing that a vote shall "in all cases" be taken by yeas and nays and entered at length upon the journal does not apply to votes taken upon motions to adjourn.[125]

§ **306. Parliamentary law.**—In speaking of the action of county boards it was said:—"It will not do to apply to the orders and resolutions of such bodies nice verbal criticism and strict parliamentary distinctions, because the business is transacted generally by plain men not familiar with parliamentary law. Therefore their proceedings must be liberally construed in order to get at the real intent and meaning of the body."[126] And it was declared in another case that if municipal bodies exercising legislative functions pursue a method of proceeding understood by themselves which arrives at substantial results, their action should not be overthrown upon any technical rules or strict construction of parliamentary law.[127] It was held to be no objection to the validity of an assessment that the order did not receive, in either branch of the city council, two several readings before its passage, as required by the rules. "It is within the power of all deliberative bodies," said the court, "to abolish, modify or waive their own rules, intended as security against hasty or inconsiderate action."[128] Where a rule of the council provides that on the indefi-

[122] Non constat that all who met remained through the proceedings: Steckert v. City of East Saginaw, 22 Mich. 104. A formal call of the roll is not required if the votes are otherwise ascertained and recorded: Brophy v. Hyatt, 10 Colo. 223; s. c. 15 Pac. 399.

[123] City of Logansport v. Crockett, 64 Ind. 319; Vawter v. Franklin College, 53 Ind. 88; Mayhew v. District of Gay Head, 13 Allen (Mass.) 129; Commissioners v. Hearne, 59 Ala. 371; Musselman v. Manly, 42 Ind. 462; City of Delphi v. Evans, 36 Ind. 90. The fact must appear upon the face of the record, and can not be proved aliunde: In re Carlton Street, 16 Hun (N. Y.) 497. The record is not supported by presumption: Tracey v. People, 6 Colo. 151; s. c. 4 Am. & Eng. Corp. Cas. 373.

[124] Town of Bayard v. Baker, 76 Iowa 220; s. c. 40 N. W. 818; 23 Am. & Eng. Corp. Cas. 126.

[125] City of Green Bay v. Brauns, 50 Wis. 204; s. c. 6 N. W. 503.

[126] Hark v. Gladwell, 49 Wis. 172; s. c. 5 N. W. 323; quoted and approved in Wisconsin &c. R. Co. v. Ashland Co., 81 Wis. 1; s. c. 50 N. W. 937.

[127] But the effect of what is done must be gathered from the record and not from testimony of members as to their understanding of it: Whitney v. Common Council &c., 69 Mich. 189; s. c. 37 N. W. 184; 30 Am. & Eng. Corp. Cas. 453, n.

[128] Holt v. City Council, 127 Mass.

nite postponement of a question it shall not be acted upon or considered again at the same session it prevents action on a question substantially the same at the same session.[129] Failure of the council to conform to the rules of parliamentary usage will not invalidate their proceedings if the requisite number have agreed to a particular measure.[130]

§ 307. **Reconsideration and rescission—General power.**—It is the undoubted right of corporate bodies, unless clearly restrained by legislative enactment, to reconsider a vote as often as they see fit, or to rescind the same, provided vested rights are not disturbed, up to the time when by a conclusive vote, accepted as such by itself, a determination has been reached.[131] They may adopt rules as to the time when reconsideration may be moved;[132] and it is not necessary to the validity of a resolution to reconsider that it should be moved by one who voted originally with the majority;[133] and a board of aldermen which has indefinitely postponed action on a resolution of the common council can afterwards rescind that action and pass the resolution.[134]

§ 308. **The same subject continued.**—An order may be rescinded by implication; as where a meeting voted to proceed to an election of a city attorney by ballot, and subsequently made an appointment

408, 411; citing Bennett v. City of New Bedford, 110 Mass. 433.

[129] Zeiler v. Central R. Co., 84 Md. 304; s. c. 35 Atl. 932.

[130] Mann v. City of Le Mars, 109 Iowa 251; s. c. 80 N. W. 327.

[131] Higgins v. Curtis, 39 Kan. 283; s. c. 18 Pac. 207; State v. Van Buskirk, 40 N. J. L. 463; State v. Barbour, 53 Conn. 76; s. c. 22 Atl. 686; 55 Am. R. 65; State v. Chapman, 44 Conn. 595; Baker v. Cushman, 127 Mass. 105; State v. Foster, 7 N. J. L. 101; State v. Justice, 24 N. J. L. 413; State v. Crosley, 36 N. J. L. 425; Mayor &c. v. State, 30 N. J. L. 521; Bigelow v. Hillman, 37 Maine 52; Commonwealth v. City of Pittsburgh, 14 Pa. St. 177; Reiff v. Connor, 10 Ark. 241; People v. Mills, 32 Hun (N. Y.) 459; State v. Hoyt, 2 Or. 246; Red v. City Council &c., 25 Ga. 386; Road Case, 17 Pa. St. 71, 75; City of New Orleans v. St. Louis Church, 11 La. An. 244; Dey v. Lee, 4 Jones L. (N. C.) 238; Tucker v. Justices &c., 13 Ired. L. (N. C.) 434; Estey v. Starr, 56 Vt. 690, where a town meeting rescinded a vote authorizing a subscription in aid of a railroad, no subscription having actually been made; Stoddard v. Gilman, 22 Vt. 568; Pond v. Negus, 3 Mass. 230.

[132] State v. Womack, 4 Wash. 19; s. c. 29 Pac. 939.

[133] People v. Common Council &c., 5 Lans. (N. Y.) 11. They may reconsider at an adjourned meeting a vote taken at a previous meeting: Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394; People v. Common Council &c., 5 Lans. (N. Y.) 11; Cassidy v. City of Bangor, 61 Maine 434.

[134] Hough v. City of Bridgeport, 57 Conn. 290; s. c. 18 Atl. 102.

by resolution viva voce.[135] A committee appointed by a board for the purpose of making a contract on its behalf acquires no vested right and may be deprived of its power by subsequent action of the board;[136] and a town school committee may reconsider its vote electing a superintendent of schools at the same meeting, and before it has been communicated to the person so elected.[137] A resolution adopted at a meeting when such action was illegal may be cured by subsequent valid proceedings in consummation thereof.[138]

§ 309. Power to reconsider and rescind qualified.—As intimated in the preceding section, when the rights of third parties have accrued under proceedings of a public body they can not be affected by a declaration of its change of mind. Thus, a vote ratifying a contract made by town officers without due authority can not be rescinded so as to discharge the town from its obligation.[139] The point at which the election of a public officer by a meeting convened for that purpose passes beyond its control and becomes irrevocable has been considered in several cases. While it is universally admitted that a ballot may be set aside for some irregularity or illegality before the election is declared,[140] it was stoutly maintained by the supreme court of errors of Connecticut that a common council, having appointed an officer by ballot whom it had no power to remove, could not nullify the appointment by a mere declaration that there was error in the ballot when there was none, and by a subsequent appointment of another person.[141] It was also held, in Maine, that after

[135] It would have been more regular to have first formally rescinded the previous order: State v. Chapman, 44 Conn. 595. In Holbrook v. Faulkner, 55 N. H. 311, a school district meeting voted to dismiss an article in the warrant, and afterwards passed a vote which was not within the scope of any article except the one rejected. The court held it to be invalid (for another reason also), and simply remarked that "no attempt appears to have been made to reconsider the vote dismissing the . . . article." These cases may evidently stand together, for the first related to the mode of proceeding, the latter to the proceeding itself. Neither case is cited in the opinion in the other. See further, for reconsideration, etc., at town meetings, the chapter on Meetings and Elections, post.

[136] Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394.

[137] Wood v. Cutter, 138 Mass. 149.

[138] State v. District Court &c., 33 Minn. 235; s. c. 22 N. W. 625; 7 Am. & Eng. Corp. Cas. 206.

[139] Brown v. Winterport, 79 Maine 305; s. c. 9 Atl. 844. See also, in point, Sanborn v. School Dist., 12 Minn. 17.

[140] State v. Phillips, 79 Maine 506; s. c. 11 Atl. 274; Putnam v. Langley, 133 Mass. 204, where the result of a recount, differing from the first count, was acquiesced in by the meeting; Baker v. Cushman, 127 Mass. 105.

[141] State v. Barbour, 53 Conn. 76; s. c. 22 Atl. 686, where the authorities

a city officer has been declared to be chosen by the board of aldermen and the declaration recorded, the board can not at an adjourned meeting held the next day, reconsider its action and choose another.[142]

§ 310. **The same subject continued.**—Where an officer's resignation is accepted by the proper board, which then confirms the mayor's nomination of a successor, the latter action is entirely inconsistent with the idea that the matter of resignation remains open for further deliberation;[143] and a board of county commissioners having rejected a claim duly presented to it can not, at a subsequent meeting, allow any part of it.[144] Where by statute a vote of two-thirds of the members of a common council is necessary to pass a resolution, a

are examined and adverse views criticized. There was a motion to proceed by ballot for prosecuting attorney, and the court held that the announcement of the result by the presiding officer was a finality without an express declaration by him that the relator was thereby elected.

[142] State v. Phillips, 79 Maine 506; s. c. 11 Atl. 274. But a motion to reconsider may be adopted at a subsequent meeting, where a legal rule of the board permits it. "All contracts implied from a resolution," said the court, "are subject to the right to change it by another resolution, passed in accordance with the rules of the board:" People v. Mills, 32 Hun (N. Y.) 459.

[143] State v. Van Buskirk, 40 N. J. L. 463. Act N. J. March 20, 1860, § 5 (Revision, p. 1201, § 45), providing that when two or more candidates for the same office have received the same number of votes at the annual meeting, the town committee shall at their next meeting thereafter elect between those having an equal number of votes, unless they shall deem a special meeting advisable, and in that case shall have power to call such special meeting, as now provided by law, is mandatory, and, the township committee having failed to elect, and ordered a special election, and caused notices to be posted, can not at a subsequent meeting rescind their action: State v. Boden, 51 N. J. L. 114; s. c. 16 Atl. 58.

[144] Ryan v. Dakota Co., 32 Minn. 138; s. c. 19 N. W. 653. "A vote may be reconsidered at an adjourned meeting if it has not been so acted on that it can not thereby be rendered nugatory:" Mitchell v. Brown, 18 N. H. 315 (school district meeting). But in that case such proceedings had been taken in pursuance of the vote that the status quo could not be restored. A resolution once adopted and again read and approved can not be repealed after the lapse of a year, and when the board has been partly changed by the retiring of members and the election of others, on the ground that it was erroneously entered, upon the mere memory of the members and without notice to the parties affected thereby: Ridley v. Doughty, 85 Iowa 418; s. c. 52 N. W. 350. And a resolution authorizing the mayor to compromise with the claimants of certain commons by conveying the land claimed at a certain price can not be repudiated so as to affect the validity of a deed given while it remained unrevoked: Dausch v. Crane, 109 Mo. 323; s. c. 19 S. W. 61.

like vote is required to reconsider or rescind it, in the absence of a contrary rule of the council regulating the practice upon motions for reconsideration.[145] But in another case, where subscriptions to stock were required to be passed by a two-thirds vote, and a proposal was made by the requisite number, it was held it might be withdrawn before acceptance, by less than a majority, and very likely by any number greater than one-third.[146]

§ 311. **Reconsideration distinguished from repeal.**—A limitation of the power of municipal legislative bodies to reconsider their actions, and the distinction between a resolution to reconsider and a vote to repeal, are illustrated in a recent decision of the supreme court of New York. An ordinance passed by the common council was vetoed by the mayor and passed over his veto. A resolution to reconsider was then adopted, vetoed, and passed over the veto. It was contended that the ordinance was by these proceedings rescinded. The court said: "The ordinance in question may be repealed, but it can not be reconsidered, for the reason that when it was passed over the mayor's veto it became a law, and thereby passed beyond the power and control of the municipal council to reconsider it. According to the uniform practice of legislative bodies, where a motion to reconsider has been passed in the affirmative, the question immediately recurs upon the question reconsidered. The question reconsidered was never acted upon in this case; therefore, if the common council had the power to reconsider the ordinance, it never rescinded it, because the question reconsidered was never acted upon. There is another fatal point in this case, which is that the ordinance, when passed over the mayor's veto, could not be again reconsidered. It is a rule well settled by parliamentary law that a vote on the reconsideration of a vetoed bill can not be reconsidered again."[147]

[145] Whitney v. Common Council &c., 69 Mich. 189; s. c. 37 N. W. 184; 30 Am. & Eng. Corp. Cas. 453, n.; Stockdale v. Wayland School Dist., 47 Mich. 226; s. c. 10 N. W. 349. In the case first cited it was held that a vote is rendered nugatory by the passage of a resolution to reconsider it, although it be not afterwards rescinded.

[146] Belfast &c. R. Co. v. Inhabitants &c., 62 Maine 148; citing Essex Turnpike Corp. v. Collins, 8 Mass. 292.

[147] Ashton v. City of Rochester, 14 N. Y. S. 855, 858; s. c. 60 Hun (N. Y.) 372; citing to the last point, Barclay Const. Man. 197; Fish Amer. Man. Parl. Law 90. See also, Sank v. City of Philadelphia, 4 Brewst. (Pa.) 133. But there seems to be no technical nor substantial difference between reconsideration and rescission in the proceedings of town meetings. Thus, where a town voted to raise a tax, but at a subsequent legal meeting, the collector having taken no steps in the matter, it was voted to "reconsider" the former

§ 312. Joint assemblies of definite bodies—Constitution and proceedings.—In England it is clearly established that where an act is to be performed by a joint meeting of two or more definite bodies, a majority of each body is essential to constitute a legal assembly, and if, after having met, one of the integral parts withdraws while a proposition is pending, further action thereon by those remaining is invalid.[148] But this stringent rule has been materially relaxed by some of the courts in this country. Thus, it is held in New York that although all the bodies—that is, a majority of each—must come together for consultation and deliberation, yet, when they do, the vote of the majority of persons present controls, notwithstanding one of the bodies should leave before the vote is taken.[149] The supreme court of New Hampshire has taken a more radical departure from the rule, holding in one case that a legal vote of one body *to meet* in convention is sufficient without the attendance of a quorum of such body at the joint meeting;[150] and in a later decision, that a vote by one body to meet the other, assented to by the latter, who were then in session, but with less than a quorum present, which members alone attended the convention, was equivalent to a vote to meet by both bodies.[151]

§ 313. Record of meetings.—The record of the council, kept by the proper officer, except subject to the rights of the council itself to correct, is to be accepted as correct in the absence of fraud.[152] Minutes may be amended by the council even after approval where no intervening rights have accrued.[153] When the officer in charge of municipal records produces them in court as the council record they can only be impeached for fraud.[154] The minutes of a preceding meeting may be corrected at the next succeeding meeting in order to show yeas and nays in compliance with the statute.[155] A nunc pro tunc

vote, the court held that the tax was not lawfully levied: Stoddard v. Gilman, 22 Vt. 568.

[148] King v. Williams, 2 Mau. & S. 141; King v. Buller, 8 East 389; King v. Miller, 6 T. R. 268.

[149] Gildersleeve v. Board of Education, 17 Abb. Pr. (N. Y.) 201; Whiteside v. People, 26 Wend. (N. Y.) 634; reversing s. c. 23 Wend. (N. Y.) 9; Ex parte Humphrey, 10 Wend. (N. Y.) 613. That all must meet in the first instance, see Commonwealth v. Hargest, 7 Pa. Co. Ct. 333.

[150] Beck v. Hanscom, 29 N. H. 213.

[151] Kimball v. Marshall, 44 N. H. 465.

[152] Commonwealth v. Schubmehl, 3 Lack. Leg. N. (Pa.) 186.

[153] Ryder's Estate v. City of Alton, 175 Ill. 94; s. c. 51 N. E. 821.

[154] Ryder's Estate v. City of Alton, 175 Ill. 94; s. c. 51 N. E. 821.

[155] Becker v. City of Henderson, 100 Ky. 450; s. c. 38 S. W. 857.

order is competent to make the minutes speak the truth.[156] The record of a council is not binding in a quo warranto proceeding, and may be contradicted.[157]

[156] Everett v. Deal, 148 Ind. 90; s. c. 47 N. E. 219.

[157] State v. Kennedy, 69 Conn. 220; s. c. 37 Atl. 503.

CHAPTER X.

OFFICIAL BONDS.

SECTION

314. Official bonds—Definition.
315. What officers must give bonds.
316. Form and requisites of bond.
317. Effect of signing official bonds in blank.
318. The same subject continued.
319. Construction of courts on bonds improperly approved.
320. Defective bonds valid as common-law obligations.
321. The same subject continued.
322. Time when an official bond takes effect.
323. Effect of not filing bonds within the time prescribed by statute.
324. The same subject continued.
325. Liability of sureties on a treasurer's bond.
326. The same subject continued.
327. Mingling of and defalcation out of two funds.
328. Liability of sureties as affected by subsequent legislation.
329. Liability of surety when subsequent legislation imposes new duties of the same general character.
330. The same subject continued.
331. Liability of officer on his bond where the loss is occasioned by the act of God or the public enemy.
332. The same subject continued.
333. Duty of obligee to notify sureties of increased risk, etc.
334. Liability of sureties on successive bonds—(a) Where different sureties are given on each bond.

SECTION

335. The same subject continued.
336. (b) Where funds received by the officer during his first term remain in his hands during his second term.
337. (c) When the sureties of the first term are liable for money converted or collected by the officer during his second term.
338. (d) When an officer before entering on his second term makes a report to or settlement with the proper authorities.
339. The same subject continued.
340. (e) Where the officer applies money received in his second term to pay deficiencies in his first term.
341. (f) Where the bond is given for a term of office or a certain period of time.
342. Laches or negligence of other officers or principal.
343. Liability of sureties where additional bonds are given.
344. Liability of surety where the official occupies two or more offices.
345. Liability of surety for unofficial acts of officer.
346. The same subject continued.
347. Liability of sureties for acts done under color of office.
348. The same subject continued—Lammon v. Feusier—The doctrine of the federal supreme court.
349. The same subject continued.

SECTION
350. The same subject continued—The doctrine of the state courts.
351. The same subject continued.
352. Illustrations of the doctrine.
353. Distinction between judicial and ministerial duties.
354. Illustrations of the doctrine.
355. The same subject continued.

§ 314. Official bonds—Definition.—Every bond which is required or authorized by statute to be executed by an officer is an official bond.[1] Accordingly an official bond is a contract with the people for the faithful discharge of the official duties of the officer;[2] and such a bond given by a public officer for the faithful performance of his duties is an official bond, although not in the form prescribed by statute.[3]

§ 315. What officers must give bonds.—Those officers who receive public moneys, as well as those who from the nature of their duties receive money or property for the benefit of private individuals, or whose duties and powers bring them into conflict with the rights of individuals, or involve the seizure and disposal of the property of individuals, are generally required by statute to give bonds with sureties for the faithful performance of their duties.[4] The Indiana statute provides that the mayor and other municipal officers therein named, including city clerk, shall, before entering on their duties, execute a bond, in such penal sum as the council shall direct, "conditioned for the faithful performance of the duties of his office and the payment of all moneys received by him according to law and the ordinances of such city." The supreme court of that state accordingly held that a bond filed by a city clerk with the statutory conditions was authorized by the statute though there could be no "money received by him according to law and the ordinances of such city."[5]

[1] Commonwealth v. Adams, 3 Bush (Ky.) 41, 46.

[2] Judge Grover, in People v. Vilas, 3 Abb. Pr. (N. S.) (N. Y.) 252; s. c. 36 N. Y. 459.

[3] Lucas v. Shepherd, 16 Ind. 368.

[4] Throop Public Officers, § 170; Dillon Munic. Corp. (4th ed.), § 297; Glover Corp. 305; Grant Corp. 76.

[5] Middleton v. State, 120 Ind. 166; s. c. 22 N. E. 123; construing § 3530 Burns R. S. Ind. 1901. The Vermont constitution requires "every officer, whether judicial, executive or military, in authority under this state," to take the oath of office. It was held that municipal officers—listers of taxes, for instance—are not included in this requirement: Rowell v. Horton, 58 Vt. 1; s. c. 3 Atl. 906. A town may lawfully require any of its officers to furnish bonds with sureties that he will faithfully perform the duties of his office: Morrell v. Sylvester, 1 Greenl. (Maine) 248.

§ 316. Form and requisites of bond.—Where a statute or charter provides for the filing of an official bond it almost invariably states the requisites of the bond; but a substantial compliance with the statute or charter is all that is necessary,[6] unless the statute or charter expressly declares that it shall follow the exact wording of the statute or charter.[7] And it has been repeatedly held that a defect in the acknowledgment of the bond, or a failure to approve or acknowledge it, does not release the principal or surety; and where the bond has been approved or acknowledged before an officer having no authority to approve or acknowledge it, the principal or surety is not released by reason of this irregularity from liability on the bond.[8]

§ 317. Effect of signing official bonds in blank.—A party executing a bond knowing that there are blanks in it to be filled up by inserting particular names or other words necessary to make it a perfect instrument must be considered as agreeing that the blanks may be thus filled up after he has executed the bond. If the party signing the paper shall insert in the appropriate places the amount of the penalty, or the names of the sureties, or any other thing he may deem of importance as affecting his interest, he may in that way protect himself against being bound otherwise than as he shall thus specify. But if, relying upon the good faith of the principal, the surety shall permit him to have possession of a bond signed in blank, the surety will have clothed the principal with an apparent authority to fill up the blanks at his discretion, in any appropriate manner consistent with the nature of the obligation to be given; so that, as against the obligee receiving the bond without notice or negligence, and in good faith, the surety will be estopped to allege that he executed the instrument with a reservation or upon a condition in respect of the filling of such blanks; and this whether the blanks to be filled have reference to the penalty of the bond, the names of co-sureties or other matter.[9]

[6] Tevis v. Randall, 6 Cal. 632.

[7] People v. Holmes, 2 Wend. (N. Y.) 281; Supervisors &c. v. Van Campen, 3 Wend. (N. Y.) 49; Fellows v. Gilman, 4 Wend. (N. Y.) 414; Lawton v. Erwin, 9 Wend. (N. Y.) 233; Cornell v. Barnes, 7 Hill (N. Y.) 35.

[8] Musselman v. Commonwealth, 7 Pa. St. 240; Young v. State, 7 Gill & J. (Md.) 253; Inhabitants &c. v. Fleming, 8 Gray (Mass.) 613; Moore v. State, 9 Mo. 334; People v. Johr, 22 Mich. 461; Green v. Wardwell, 17 Ill. 278; State v. Blair, 32 Ind. 313; People v. Edwards, 9 Cal. 286. The bond must not impose penalties greater than those required by the statute: Stewart v. Lee, 3 Cal. 364; United States v. Morgan, 3 Wash. C. C. 10.

[9] City of Chicago v. Gage, 95 Ill. 593. This is a case where a printed form of a city treasurer's bond was executed by himself in blank and sent by him to his sureties, who

§ 318. The same subject continued.—An important decision on this point was rendered by the supreme court of the United States in 1874. This was a suit upon the bond of an internal revenue collector executed by the collector as principal and by several sureties. One of these sureties pleaded that when he signed and sealed the bond it was a printed form, with names, dates and amount of penalty in blank; that he delivered it to the collector under an express agreement that the latter should fill the blank with a penalty of a certain amount only and procure two other sureties within certain territorial limits each worth a certain amount, otherwise the bond was to be null and void and returned to him; and that the collector fraudulently filled the bond with a greater penalty than that agreed upon and with two additional sureties, neither of whom resided within the agreed territorial limits and both of whom were insolvent. The court decided that the plea was bad and that the sureties were liable.[10]

§ 319. Construction of courts on bonds improperly approved.—Where a statute does not especially require strict compliance with its provisions as to the acknowledgment and execution of official bonds to render them valid, courts are very liberal in their construction of the law prescribing the mode of execution.[11] The omission of an

signed it in blank and returned it to the principal, who some time afterwards took it to the office of the corporation counsel, and had the blanks filled in, when the bond was returned to the city clerk and presented to and approved by the common council as the official bond of said treasurer. The treasurer defaulted, suit was brought on the bond, and the sureties entered pleas of non est factum. The court held that the sureties were liable, and that the case of People v. Organ, 27 Ill. 26, was overruled, or, more correctly speaking, that the old common-law rule upon which the decision in People v. Organ is based has been overborne by the application of the doctrine of estoppel in pais. Where a bond has been executed in blank and delivered to the proper official, he may fill in the blank, and the bond is a good and valid one: Hultz v. Commonwealth, 3 Grant Cas. (Pa.) 61. See State v. Pepper, 31 Ind. 76. For contrary decision, see United States v. Nelson, 2 Brock. C. C. 64.

[10] Butler v. United States, 21 Wall. 272. See also, Dair v. United States, 16 Wall. 1; Drury v. Foster, 2 Wall. 24; Inhabitants &c. v. Huntress, 53 Maine 89; State v. Pepper, 31 Ind. 76, and cases there cited; McCormick v. Bay City, 23 Mich. 457; State v. Peck, 53 Maine 284; Bartlett v. Board of Education, 59 Ill. 364; Mutual &c. Co. v. Wilcox, 8 Biss. C. C. 197; s. c. 4 Myer Fed. Dec., § 635.

[11] Young v. State, 7 Gill & J. (Md.) 253; Boone Co. v. Jones, 54 Iowa 699; s. c. 2 N. W. 987; 7 N. W. 155; 37 Am. R. 229; Mendocino Co. v. Morris, 32 Cal. 145. For cases where a bond was held to be vitiated by reason of a defective approval, see O'Marrow v. City of Port Huron, 47 Mich. 585; s. c. 11 N. W. 397; Crawford v. Meredith, 6 Ga. 552. The sureties on a town treasurer's

excise commissioner to execute an official bond, approved by the supervisor of the town, does not create a vacancy; at the utmost, it only furnishes cause for a forfeiture of the office; a vacancy can be effected only by a direct proceeding for that purpose.[12] Thus, where an excise commissioner failed to procure the approval of the supervisor to the bond presented and filed by him, and at a subsequent town meeting, on the supposition that the failure to have the bond approved vacated the office, votes were cast electing another excise commissioner "to fill vacancy, if any exist," it was held that the failure of the first commissioner to have his bond approved did not vacate the office, and that there was no vacancy to fill.[13]

§ 320. **Defective bonds valid as common-law obligations.**—It is a well-settled rule of law where a defective bond is given and the officer enters upon and discharges his duties, that the bond is good as a common-law obligation, and the sureties thereon are liable, unless such rule would be contrary to public policy or is expressly forbidden by statute.[14] Thus, where the board of education of a union free school, incorporated under a common school act, by mistake and in good faith, instead of taking a bond from one elected as its treasurer, as required by said act, accepted a writing in the form of a bond, but not under seal, the same was held valid and enforceable against the sureties thereto.[15]

bond are liable on the bond for a failure to pay over or account for moneys received notwithstanding the bond was approved by resolution instead of ordinance: Town of Gloster v. Harrell, 77 Miss. 793; s. c. 23 So. 520, 941; 27 So. 609.

[12] People v. Common Council &c., 77 N. Y. 503.

[13] Cronin v. Stoddard, 97 N. Y. 271; following Foot v. Stiles, 57 N. Y. 399.

[14] United States v. Tingey, 5 Peters 115; United States v. Linn, 15 Peters 290; Jessup v. United States, 106 U. S. 147; s. c. 1 S. Ct. 74; United States v. Rogers, 28 Fed. 607; Inhabitants &c. v. Haughton, 7 Conn. 543; State v. Horn, 94 Mo. 162; s. c. 7 S. W. 116; State v. Bartlett, 30 Miss. 624; Sweetser v. Hay, 2 Gray (Mass.) 49, and cases there cited; King v. Ireland, 68 Tex. 682; s. c. 5 S. W. 499; Polk v. Plummer, 2 Humph. (Tenn.) 500; Lee v. Waring, 3 Desau. (S. C.) 57; Board &c. v. Coffinbury, 1 Mich. 355; Barnes v. Brookman, 107 Ill. 317; Pritchett v. People, 6 Ill. 525. See also, McGowen v. Deyo, 8 Barb. (N. Y.) 340; Classen v. Shaw, 5 Watts (Pa.) 468; State v. Thompson, 49 Mo. 188; Freeman v. Davis, 7 Mass. 200; Burroughs v. Lowder, 8 Mass. 373; Howard v. Brown, 21 Maine 385; Rowlett v. Eubank, 1 Bush (Ky.) 477; Williams v. Shelby, 2 Or. 144.

[15] Board of Education v. Fonda, 77 N. Y. 350 (distinguishing Hardmann v. Bowen, 39 N. Y. 196); Rounds v. Mansfield, 38 Maine 586. See also, Boothbay v. Giles, 68 Maine 160; United States v. Hodson, 10 Wall. 395; Thomas v. White, 12 Mass. 367. A bond without any specified obligee has been held valid as a common-law obligation: Fellows v. Gilman, 4 Wend. (N. Y.) 414, 419.

§ 321. The same subject continued.—Where the statute prescribes certain obligees to whom an official bond is to be made payable, and a bond is given payable to an obligee other than the one prescribed by statute, and the bond in other respects complies with the requirements of the statute, it is good as a common-law bond.[16] And where parties being under no legal disability, and capable of making contracts, enter into a voluntary bond based on a good and valid consideration and for a lawful purpose, the bond is binding on them at common law.[17]

§ 322. Time when an official bond takes effect.—An official bond resembles a deed in that it takes effect from the date of delivery thereof.[18] Thus, it has been held by the supreme court of the United States that where a bond was delivered to the obligee for acceptance, and it was accepted afterwards, it took effect from the date of delivery and not from the acceptance thereof.[19] The court said: "A bond may not be a complete contract until accepted by the obligee; but if it has been delivered to him to be accepted if he should choose to do so, that is not a conditional delivery which will postpone the obligor's undertaking to the time of its acceptance, but an admission that the bond is then binding upon him and will be so from that time if it should be accepted."[20]

[16] United States v. Maurice, 2 Brock. C. C. 96, 115; Iredell v. Barbee, 9 Ired. L. (N. C.) 250; Reid v. Humphreys, 7 Jones L. (N. C.) 258; Williams v. Ehringhaus, 3 Dev. L. (N. C.) 297. See also, Moore v. Graves, 3 N. H. 408; Horn v. Whittier, 6 N. H. 88; Governor v. Allen, 8 Humph. (Tenn.) 176; Van Hook v. Barnett, 4 Dev. L. (N. C.) 268; Justices v. Smith, 2 J. J. Marsh. (Ky.) 472.

[17] Archer v. Hart, 5 Fla. 234. It has been held that where an officer occupying two official positions, having filed a bond for his due and faithful performance of one of them, voluntarily gives a bond for the performance of the duties of the other position, the latter bond is a valid common-law obligation, even though he was not required by statute to give such a bond: State v. Harney, 57 Miss. 863. See also, Board &c. v. Coffinbury, 1 Mich. 355; People v. Johr, 22 Mich. 461; City of Platteville v. Hooper, 63 Wis. 385; s. c. 23 N. W. 583. For contrary opinions, see State v. Heisey, 56 Iowa 404; s. c. 9 N. W. 327; United States v. Humason, 6 Sawyer 199; State v. Bartlett, 30 Miss. 624.

[18] Johnson v. Harvey, 84 N. Y. 363; Eberhardt v. Wood, 6 Lea (Tenn.) 467; s. c. 2 Tenn. Ch. 488; Bryant v. Woods, 11 Lea (Tenn.) 327.

[19] Butler v. United States, 88 U. S. 272.

[20] See also, State v. Tool, 4 Ohio St. 553. Where a collector's bond has been filed within the time prescribed by statute, but is not accepted until the statutory time has elapsed, the acceptance relates back to the time of filing and the bond is valid: Drew v. Morrill, 62 N. H. 23. Where a statute requires an official bond to be given and makes no special provision for the mode of its delivery, it has been held that

§ 323. Effect of not filing bonds within the time prescribed by statute.—The weight of the American authorities is decidedly in favor of the doctrine that if a statute fixes the time within which bonds are to be given the provision is directory and not mandatory; and that unless it expressly declares that the failure to give the bond by the time prescribed ipso facto vacates the office, the bond may be given at any time if no vacancy has been declared.[21] And it has been held where the statute requires an officer to file a bond every year that his mere failure to do so does not vacate the office.[22]

§ 324. The same subject continued.—But the cases are not unanimous on this point; and in some states it has been held that the failure to give the bond within the prescribed time vacates the office, without any proceedings to declare it vacant; so that it can not be restored by any subsequent compliance with the statute.[23] Thus, in a Texas

the filing thereof is a delivery: Board &c. v. Bird, 31 Cal. 66.

[21] Dillon Munic. Corp. (4th ed.), § 214; United States v. Le Baron, 19 How. 73; People v. Holley, 12 Wend. (N. Y.) 481; People v. Ferguson, 20 Week. Dig. (N. Y.) 276; Duntley v. Davis, 42 Hun (N. Y.) 229; Cronin v. Stoddard, 97 N. Y. 271; People v. Crissey, 91 N. Y. 616; Marbury v. Madison, 1 Cranch 137; Kearney v. Andrews, 10 N. J. Eq. 70; President &c. (Bank) v. Dandridge, 12 Wheat. 64; State v. Churchill, 41 Mo. 41; State v. County Court, 44 Mo. 230; Ross v. Williamson, 44 Ga. 501; Paine Elections, § 232; Sprowl v. Lawrence, 33 Ala. 674; State v. Falconer, 44 Ala. 696; Smith v. Cronkhite, 8 Ind. 134; State v. Colvig, 15 Or. 57; s. c. 13 Pac. 639; State v. Findley, 10 Ohio 51; State v. Ring, 29 Minn. 78; s. c. 11 N. W. 233; Cawley v. People, 95 Ill. 249. For the effect of the failure of a city marshal to give his bond in time, see State v. Porter, 7 Ind. 204. For city treasurer's bond, see City of Chicago v. Gage, 95 Ill. 593; Caskey v. City of Greensburg, 78 Ind. 233.

[22] Clark v. Ennis, 45 N. J. L. 69. Where a statute required the master in chancery within three weeks after his election to tender his bond for approval, and upon its approval to deposit it with the treasurer and sue out his commission, and that "upon his failure to do so within the said time his office shall be deemed absolutely vacant, and shall be filled by election or appointment as heretofore provided," it was held that the failure to comply with this requirement was only cause of forfeiture, but not a forfeiture ipso facto: State v. Toomer, 7 Rich. L. (S. C.) 216. See also, State v. Laughton, 19 Nev. 202; s. c. 8 Pac. 344; 9 Am. & Eng. Corp. Cas. 79, n.; Sprowl v. Lawrence, 33 Ala. 674; Kottman v. Ayer, 3 Strob. (S. C.) 92.

[23] Throop Public Officers, § 173; In re Attorney-General, 14 Fla. 277; Creighton v. Commonwealth, 83 Ky. 142; Falconer v. Shores, 37 Ark. 386; Vaughan v. Johnson, 77 Va. 300; Childrey v. Rady, 77 Va. 518; Owens v. O'Brien, 78 Va. 116; State v. Johnson, 100 Ind. 489; State v. Matheny, 7 Kan. 327; People v. Perkins, 85 Cal. 509; s. c. 26 Pac. 245; People v. Taylor, 57 Cal. 620; State v. Hadley, 27 Ind. 496; Kilpatrick v. Smith, 77 Va. 347; Johnson v. Mann, 77 Va. 265. See also, Jackson v. Simonton, 4 Cranch C. C. 255; Ben-

case,[24] it was held that a statute requiring an officer to qualify within a certain time was directory, only where the delay was caused by something over which he had no control, and not in case of his refusal or neglect to qualify.

§ 325. Liability of sureties on a treasurer's bond.—The sureties on a city treasurer's bond pleaded that by ordinance it was the duty of the mayor to supervise the conduct of the treasurer, and, in case of misconduct of the treasurer, to transmit information to the common council; and that the mayor was invested with full power to examine all books in the custody of the treasurer; and that it was the duty of the common council to examine into the conduct of the treasurer, and to remove him in case of any violation of his duty; and that defendants became sureties, relying on the protection afforded them by the faithful discharge of the said duty; and that the mayor and the common council refused to perform such duty, and knowingly suffered the breaches. The court decided that the duty to discharge the official would arise, and the non-performance of it be a defense to the sureties, only after knowledge of the officer's dishonesty was brought home to the common council; and that on the averments in this plea defense was made on the neglect of duty by the mayor; and that his neglect of duty was no defense.[25] But a plea by the sureties

nett v. State, 58 Miss. 556. For the English rule, see Prowse v. Foot, 3 Bro. P. C. 167; Anonymous, Free. 474.

[24] Flatan v. State, 56 Tex. 93.

[25] Mayor &c. v. Stout, 52 N. J. L. 35; s. c. 18 Atl. 943. A new bond given by a village treasurer at the request of the village council, and thereafter treated and accepted as his official bond, is binding upon him and his sureties, although no formal resolution requiring the bond and no resolution approving it were recorded: Village of Evart v. Postal, 86 Mich. 325; s. c. 49 N. W. 53. Payment by a city treasurer of a warrant which he knows to be illegal out of money set apart for the payment of the legal warrant substituted for that which was illegal, thereby exhausting the fund out of which the former was payable, is a misappropriation of the fund for which the sureties on his bond are liable: Priet v. De La Montanya, 85 Cal. 148; s. c. 24 Pac. 612. A complaint alleged that a city treasurer failed to pay over according to law money which came into his hands as treasurer. Plaintiff offered books kept by the treasurer which showed parties indebted to the city who had, in fact, paid the treasurer; also an ordinance providing that the treasurer should keep a true account of all moneys received by him. Defendants pointed to a provision that the city treasurer should receive one-sixth of all moneys collected by him, and also offered the treasurer's books which showed the amount collected and turned into the city, and that on this amount the treasurer had received only ten per cent. The court decided that the additional six and two-thirds per cent. should have been considered in bar of recovery against the sureties under a general

on a city treasurer's bond that the city, contriving and intending to injure defendants, wilfully neglected to examine the treasurer's accounts annually, and otherwise permitted, encouraged and induced and were privy to the alleged breaches, is good.[26]

§ 326. **The same subject continued.**—A county treasurer's bond reciting that the treasurer and his sureties are each severally bound, and that they bind themselves severally, is not rendered void so as to relieve the sureties from liability by the failure of the treasurer to execute the bond.[27] Application of payments by a public officer is binding on his sureties; and they can not escape liability for his failure to pay over money collected during the term for which they were sureties by showing that he wrongfully applied such moneys to the payment of deficiencies occurring during the preceding term.[28]

denial of the complaint: City of Butte v. Cohen, 9 Mont. 435; s. c. 24 Pac. 206. Where officers of a town are negligent in discovering the defalcation of the treasurer within such time as would have enabled the sureties to protect themselves it will not discharge the sureties: Inhabitants &c. v. Soule, 175 Mass. 400; s. c. 56 N. E. 575.

[26] Mayor &c. v. Stout, 52 N. J. L. 35; s. c. 18 Atl. 943; following Mayor v. Dickerson, 45 N. J. L. 38.

[27] Douglas Co. v. Bardon, 79 Wis. 641; s. c. 48 N. W. 969. Opposite the signature of each bondsman was set the amount for which he was obligated. In the body of the instrument, after the part specifying these amounts, was the phrase, "for the payment of which, well and truly to be made, we bind ourselves, our heirs, representatives, administrators and assigns, jointly and severally, by these presents." Compiled statutes of Montana, § 631 (Code Civil Proc.), provides that in the construction of the instrument the intention of the parties is to be pursued, if possible, and when a general and a particular provision are inconsistent the latter is paramount; and a particular intent will control a general one that is inconsistent with it. Section 336 provides that when an agreement has been intended in a different sense by the different parties to it, the sense is to prevail against either party in which he supposed the other understood it; and, when different constructions are equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made. In an action on the bond the complaint alleged that "defendants have forfeited the bond and become and are indebted to plaintiff in the respective sums set after their names in said bond." It was held that the instrument bound the sureties severally for the amount only expressly stated as respectively undertaken: City of Butte v. Cohen, 9 Mont. 435; s. c. 24 Pac. 206. A bond of a town treasurer complying with the statute, except that it is executed to the supervisors of the town or their successors in office, instead of "to the town by its name," is valid, and an action thereon may be maintained by the town: City of Platteville v. Hooper, 63 Wis. 385; s. c. 23 N. W. 583.

[28] Crawn v. Commonwealth, 84 Va. 282; s. c. 4 S. E. 721; 10 Am. St. 839; § 340, post. A city does not, by ap-

§ 327. **Mingling of and defalcations out of two funds.**—Where the treasurer of a board of education was also the general manager of a private corporation, and had the control of its funds as well as of the school funds, and he deposited its funds and the school funds together in a national bank, in the name of the private corporation, with the knowledge and consent of the officers of the bank, such funds to be subject to his control, and to his checks for schools and school corporation purposes, as well as for the private corporation purposes,—it was held that although as manager of the private corporation he drew out the funds in the bank so as to cause a deficit in the amount of the school funds on deposit at the time of the execution of a second bond, still, as more than enough moneys were afterwards deposited by him as treasurer of the private corporation to liquidate and satisfy the shortage, such deficit ceased to exist, and for a subsequent defalcation in the school funds the sureties on the second bond were liable.[29] And where a city treasurer was custodian of a school fund in respect of which the sureties on his official bond were not liable, and the money received by him was kept in one mass without any means of determining to which fund any part of it belonged, and he misappropriated some of the funds so that it was

proving the reports of the city treasurer from time to time, estop itself to sue on the treasurer's bond after the end of his term, for embezzlement or defalcation prior to such approval. "We do not think," said the court, "that the approval by the city of the treasurer's reports amounted to an assertion that the treasurer actually held in his hands the money so appearing by the reports:" Britton v. City of Fort Worth, 78 Tex. 227, 231; s. c. 14 S. W. 585; 34 Am. & Eng. Corp. Cas. 411. Under the revised statutes of Texas, ch. 3, tit. 78, art. 3791, providing that treasurers of cities having management of schools shall have the same powers and perform the same duties as county treasurers, and art. 3728, providing that county treasurers shall execute special bonds as school treasurers, the sureties on the general bond of a city treasurer are not liable for his defalcations out of the school fund: Broad v. City of Paris, 66 Tex. 119; s. c. 18 S. W. 342.

[29] Gilbert v. Board of Education, 45 Kan. 31; s. c. 25 Pac. 226; 34 Am. & Eng. Corp. Cas. 399. "In all cases where accounts exist between parties," said the court, "including bank accounts, a cause of action does not exist with reference to each item of the account, but only as to the balance that may be due to one or the other of the parties; and it exists in favor only of that party in whose favor the balance is due: Waffle v. Short, 25 Kan. 503; Tootle v. Wells, 39 Kan. 452; s. c. 18 Pac. 692. And each new item added to the account, in favor of the person against whom the balance is due, operates as payment or partial payment of such balance; and it will generally operate in payment or partial payment of the oldest item of the account not yet paid or satisfied: Shellabarger v. Binns, 18 Kan. 345; 1 Morse Banks and Banking, § 355."

impossible to say that any sum less than the whole that was misappropriated belonged to either, it was presumed in an action upon his official bond that he embezzled a pro rata proportion of each fund.[30]

§ 328. **Liability of sureties as affected by subsequent legislation.**—In a Virginia case[31] it was held that the regulations prescribed by law for the settlement of officers' accounts at stated intervals, being intended for the benefit of the government, to secure punctuality and promptness in its officers, were directory merely and did not enter into and form part of the contract of the sureties, so as to prevent the legislature from altering or extending the times of settlement at pleasure without the assent of the sureties; and therefore, and from the nature of the officer's obligation and duties, and of the condition of the bond, such an extension did not operate as a discharge of the surety. This doctrine was approved in a case[32] where the surety of a treasurer who had defaulted to the state claimed to be discharged of his obligation by the act of the assembly which extended the time of payment by the debtor, and thus enabled him, as was alleged, to default by postponing the time of the discovery of his delinquencies.[33]

§ 329. **Liability of surety when subsequent legislation imposes new duties of the same general character.**—A public officer takes his office with the obligation to perform all the duties incident to or connected with it then existing, or that may be added by the legislature, provided the nature and character of the duties remain the same; it is indispensable to the proper management of public affairs, and serious injury to the public interest would occur were the rule otherwise. The obligation is for a faithful performance by the principal of all the duties of the office during the term of his appointment, not of duties as they exist at any particular moment. His duties vary with the requisitions of the statute; and whatever the

[30] Britton v. City of Fort Worth, 78 Tex. 227; s. c. 14 S. W. 585; 34 Am. & Eng. Corp. Cas. 411.

[31] Commonwealth v. Holmes, 25 Gratt. (Va.) 771.

[32] Smith v. Commonwealth, 25 Gratt. (Va.) 780.

[33] In the case of United States v. Kirkpatrick, 9 Wheat. 720, Judge Story says these regulations as to settlements "are provisions of law created by the government for its own security and protection and to regulate the conduct of its own officers. They are merely directory to such officers and constitute no part of the contract of the surety." On this point see also, United States v. Boyd, 15 Peters 187-208; United States v. Van Zandt, 11 Wheat. 184; United States v. Nicholl, 12 Wheat. 505, 509; State v. Carleton, 1 Gill (Md.) 249.

statute imposes or withdraws becomes or ceases to be a part of his duty. The only limitation to this rule is that the duties imposed shall be of the same general nature and character.[34]

§ 330. **The same subject continued.**—Mr. Justice Clifford, in delivering the opinion of the supreme court of the United States, said that "any substantial addition by law to the duties of the obligor of a bond, after the execution of the instrument, materially enlarging his liabilities, will not impose any additional responsibility upon his sureties unless the words of the bond, by a fair and reasonable construction, bring such subsequently imposed duties within its provisions."[35] In a later case substantially the same rule was laid down by Judge Lowell, of the United States circuit court.[36] And in England it was said by Chief Justice Campbell that "the question is whether the nature and functions of the office or employment are changed; for if they are, it is not the same office within the meaning of the bond."[37] Thus, where a superintendent of water-works whose

[34] People v. Vilas, 3 Abb. Pr. (N. S.) (N. Y.) 252; s. c. 36 N. Y. 459; Mayor &c. v. Ryan, 35 How. Pr. (N. Y.) 408; Strong v. United States, 6 Wall. 788; White v. Fox, 22 Maine 341; Marney v. State, 13 Mo. 7; Colter v. Morgan, 12 B. Mon. (Ky.) 278; Walker v. Chapman, 22 Ala. 116; Bartlett v. Governor, 2 Bibb (Ky.) 586; Governor v. Ridgeway, 12 Ill. 14; Compher v. People, 12 Ill. 290; Grayham v. County Court &c., 9 Dana (Ky.) 184; Hatch v. Inhabitants &c., 97 Mass. 533. See also, Gaussen v. United States, 97 U. S. 584. The imposition by the board of supervisors of a county upon the county treasurer during his term of office of the duty of raising, keeping and disbursing large sums of money in addition to the usual and ordinary duties of his office,—for instance, the raising and disbursing money during a war for bounty purposes,—does not discharge the sureties upon his bond from liability: Board &c. v. Clarke, 92 N. Y. 391.

[35] United States v. Powell, 14 Wall. 493, 504; holding, however, that a distiller's bond for the faithful performance of all the provisions of law relating to his duties was broad enough to cover duties subsequently imposed by law: Farr v. Hollis, 9 B. & C. 315, 322. Cf. United States v. Kirkpatrick, 9 Wheat. 720, 738; United States v. Singer, 15 Wall. 111; People v. Tompkins, 74 Ill. 482.

[36] United States v. McCortney, 1 Fed. 104; citing Postmaster-General v. Munger, 2 Paine C. C. 189; White v. Fox, 22 Maine 341; Governor v. Ridgway, 12 Ill. 14; Boody v. United States, 1 Woodb. & M. 150; Smith v. Board &c., 59 Ill. 412; People v. Vilas, 36 N. Y. 459, 465; Mayor v. Sibberns, 3 Abb. App. Dec. (N. Y.) 266; Bartlett v. Governor, 2 Bibb (Ky.) 586; Colter v. Morgan, 12 B. Mon. (Ky.) 278; Commonwealth v. Gabbert, 5 Bush (Ky.) 438; Marney v. State, 13 Mo. 7; King v. Nichols, 16 Ohio St. 80; Gaussen v. United States, 2 Woods 92; s. c. 97 U. S. 584; United States v. Powell, 14 Wall. 493; United States v. Singer, 15 Wall. 111.

[37] Pybus v. Gibb, 6 El. & Bl. 902. which holds that the surety is entirely discharged. See also, Oswald v. Mayor &c., 5 H. L. Cas. 856.

duties were not defined by law gave a bond for the performance of his duties, including the accounting for moneys, and an ordinance was then passed requiring him to collect water rents, his sureties were not deemed to guaranty his fidelity in respect of such rents.[38]

§ 331. Liability of officer on his bond where the loss is occasioned by the act of God or the public enemy.—It is the doctrine of the supreme court of the United States that a public officer who has given a bond for the faithful performance of his duties, and the keeping, accounting for and paying over of the moneys which come to his hands, is relieved from liability for loss only where it is occasioned by the act of God or the public enemy.[39] This general rule is affirmed in many of the state courts;[40] where it is accordingly held that if money is lost by the failure of a bank in which it was deposited, the officer and his sureties are liable regardless of negligence.[41]

But several cases in the United States enforced the obligation of the bond in respect of duties imposed by law at the time it was executed, and declared it void as against the sureties only for the extension: United States v. Kirkpatrick, 9 Wheat. 720; Commonwealth v. Holmes, 25 Gratt. (Va.) 771; Gaussen v. United States, 97 U. S. 584. See also, Marquette Co. v. Ward, 50 Mich. 174; s. c. 15 N. W. 70.

[39] City of Lafayette v. James, 92 Ind. 240; s. c. 47 Am. R. 140; People v. Pennock, 60 N. Y. 421; Mumford v. Memphis &c. R. Co., 2 Lea (Tenn.) 393; s. c. 31 Am. R. 616; White S. M. Co. v. Mullins, 41 Mich. 339; s. c. 2 N. W. 196.

[39] United States v. Prescott, 3 How. 578 (the leading case, where Mr. Justice McLean does not consider the law of bailments applicable to the case, and places the liability on the breach of the express contract, and fortifies it by considerations of public policy); Bevans v. United States, 13 Wall. 56; United States v. Keehler, 9 Wall. 83; Boyden v. United States, 13 Wall. 17; United States v. Dashiel, 4 Wall. 182; United States v. Morgan, 11 How. 153; United States v. Thomas, 15 Wall. 337; United States v. Humason, 6 Sawyer 199.

[40] State v. Clark, 73 N. C. 255, and United States v. Watts, 1 N. Mex. 553, carrying the rule to the uttermost limits; Inhabitants &c. v. Hazzard, 12 Cush. (Mass.) 112; Commonwealth v. Comly, 3 Pa. St. 372; Inhabitants &c. v. McEachron, 33 N. J. L. 339; Board &c. v. Jewell, 44 Minn. 427; s. c. 46 N. W. 914; Board &c. v. Tower, 28 Minn. 45; s. c. 8 N. W. 907; County Com'rs v. Lineberger, 3 Mont. 231; State v. Harper, 6 Ohio St. 607; State v. Nevin, 19 Nev. 162; s. c. 7 Pac. 650; State v. Moore, 74 Mo. 413; Taylor Tp. v. Morton, 37 Iowa 550; Rock v. Stinger, 36 Ind. 346; Morbeck v. State, 28 Ind. 86; Halbert v. State, 22 Ind. 125; Clay Co. v. Simonson, 1 Dak. 403; s. c. 46 N. W. 592. See also, Muzzy v. Shattuck, 1 Denio (N. Y.) 233; Union Tp. v. Smith, 39 Iowa 9.

[41] Havens v. Lathene, 75 N. C. 505; Lowry v. Polk Co., 51 Iowa 50; s. c. 49 N. W. 1049; Nason v. Poor Directors, 126 Pa. St. 445; s. c. 17 Atl. 616; Hart v. Poor Guardians, 81½ Pa. St. 466; State v. Powell, 67 Mo. 395; Perley v. Muskegon Co., 32 Mich. 132.

§ 332. The same subject continued.—On the other hand, several state courts of high authority have arrived at a contrary conclusion. Thus, in New York, it was held that there was no liability on the bond of a county treasurer for the loss of money by theft without negligence on his part.[42] In Alabama "the highest amount of care, diligence and vigilance" is exacted of the officer; but if he is robbed despite great prudence and circumspection, which is a question of fact for the jury, it constitutes a good defense.[43] The same rule is declared in Maine,[44] South Carolina,[45] and by implication at least in Louisiana.[46]

§ 333. Duty of obligee to notify sureties of increased risk, etc.—The question has frequently arisen between private corporations and the sureties on the official bonds of their agents whether the obligee is bound to communicate to the guarantor facts which materially increase the risk, such as the previous dishonesty or default of the agent. It is declared in Massachusetts that "the creditor owes no duty of active diligence to take care of the interest of the surety. It is the business of the surety to see that his principal performs the duty which he has guaranteed and not that of the creditor. * * * Mere inaction of the creditor will not discharge the surety unless it amounts to fraud or concealment."[47] This is also the rule in Iowa,[48]

[42] Supervisors v. Dorr, 25 Wend. (N. Y.) 440; s. c. 7 Hill (N. Y.) 583. And in the same state the sureties of a surrogate were not liable for the loss of money deposited with a banker in good credit, who afterward failed: People v. Faulkner, 107 N. Y. 477; s. c. 14 N. E. 415; rev'g s. c. 38 Hun (N. Y.) 607.

[43] State v. Houston, 78 Ala. 576; State v. Houston, 83 Ala. 361; s. c. 3 So. 859.

[44] Inhabitants &c. v. Pennell, 69 Maine 357. See, for a qualification of this defense, Inhabitants &c. v. Lowell, 70 Maine 437.

[45] York Co. v. Watson, 15 S. C. 1.

[46] State v. Lanier, 31 La. An. 423. See also, Walker v. British Guarantee Ass'n, 18 Q. B. 277; s. c. 21 L. J. Q. B. 257.

[47] Watertown F. Ins. Co. v. Simmons, 131 Mass. 85; s. c. 41 Am. R. 196; citing Wright v. Simpson, 6 Ves. 714; President &c. v. Anthony, 18 Pick. (Mass.) 238; Taft v. Gifford, 13 Met. (Mass.) 187; Tapley v. Martin, 116 Mass. 275; and disapproving Sanderson v. Aston, L. R. 8 Ex. 73; s. c. 4 Eng. Rep. 452. See also, President &c. v. Root, 2 Met. (Mass.) 522; Locke v. Postmaster-General, 3 Mason 446; McKecknie v. Ward, 58 N. Y. 541. Cf. Graves v. Lebanon Nat'l Bank, 10 Bush (Ky.) 23; s. c. 19 Am. R. 50, where the directors of a bank published a statement showing its affairs to be in good condition, when by reasonable diligence they would have discovered that the cashier was a defaulter. This was held to discharge one who became a surety of the cashier upon the faith of their statement.

[48] Home Ins. Co. v. Holway, 55 Iowa 571; s. c. 8 N. W. 457.

Wisconsin,[49] Illinois,[50] Rhode Island,[51] and New York;[52] but it is opposed to the doctrine in England,[53] New Jersey,[54] Maine,[55] and Kentucky.[56] Admitting the tortious quality of a neglect to notify the surety in such cases, it would be difficult to maintain that the sureties on the bond of a public officer are discharged by a failure to inform them of previous defaults. It was expressly decided in Minnesota that knowledge by a board of county commissioners when they accepted a treasurer's bond that the officer had converted funds during a prior term did not release the sureties.[57] Nor would the members of the board be personally liable under the same circumstances.[58]

§ 334. Liability of sureties on successive bonds—(a) Where different sureties are given on each bond.—When successive bonds with different sureties have been given for the faithful performance of the duties of the same officer, and a breach has taken place in the conditions of the bonds in not accounting for and paying over moneys by him received, considerable difficulty may be experienced in determining upon which bond and its sureties the liability shall fall. With respect to the general principle applicable to such cases there is no great contrariety of opinion; but in the application of those principles to existing cases considerable judicial dissension has been manifested. There is no doubt that an official bond may be so drawn as to render the sureties answerable for the past as well as for the future derelictions of their principal. Thus, if the condition of a bond is that the officer shall pay all sums of money which he has received, and all which he shall hereafter receive, this language will impose on the sureties the liability for past as well as for future defaults.[59]

[49] Ætna L. Ins. Co. v. Mabbett, 18 Wis. 698.

[50] Roper v. Trustees &c., 91 Ill. 518. See also, Ham v. Greve, 34 Ind. 18.

[51] Atlas Bank v. Brownell, 9 R. I. 168.

[52] Bostwick v. Van Voorhis, 91 N. Y. 353.

[53] Phillips v. Foxhall, L. R. 7 Q. B. 666; Enright v. Falvey, 4 L. R. Ir. 397; Sanderson v. Aston, L. R. 8 Ex. 73.

[54] State v. Sooy, 39 N. J. L. 135.

[55] Franklin Bank v. Cooper, 36 Maine 179, 197.

[56] Graves v. Lebanon Nat'l Bank, 10 Bush (Ky.) 23. See also, Charlotte &c. Co. v. Gow, 59 Ga. 685.

[57] "If the bond was sufficient it was their duty to accept it:" Pine Co. v. Willard, 39 Minn. 125; s. c. 39 N. W. 71.

[58] Held v. Bagwell, 58 Iowa 139; s. c. 12 N. W. 226, holding, as intimated in the case last cited, that the duty of approving bonds is purely public.

[59] Saunders v. Taylor, 9 B. & C. 35. But the construction of all official bonds, in the absence of express provision to the contrary, is pros-

§ 335. The same subject continued.—In other words, it may be said that the sureties of an officer are answerable only for those acts or defaults of their principal which occur subsequently to the execution of his official bond. So, if after an official bond has been given a further bond is executed for any reason for the same officer, the sureties on this last bond are answerable only for such moneys as may be received by their principal after its execution.[60] The defaults of a prior term are not chargeable against the sureties on an official bond for a subsequent term.[61]

§ 336. (b) Where funds received by the officer during his first term remain in his hands during his second term.—If, however, the moneys which have been collected during the first term of office remain in the custody of the officer when he enters upon the discharge of his duties for the second term, the sureties for the latter term immediately become answerable therefor, and those of the former term are relieved from further liability.[62] It is sometimes the duty of an officer, notwithstanding the expiration of his official term, to proceed to complete some matter which has devolved upon him officially. In that event his sureties remain liable for his acts done

pective rather than retrospective. If the principal in the bond has received moneys, prior to its execution, whether before or after his appointment to the office, the bond will not be construed as having regard to such moneys; and his default in not properly accounting for them will not be regarded as a breach of such bond: United States v. Boyd, 15 Peters 187; United States v. Giles, 9 Cranch 212; Governor v. Gibson, 14 Ala. 326; Sebastian v. Bryan, 21 Ark. 447; Jeffers v. Johnson, 18 N. J. L. 382; Myers v. United States, 1 McLean 493; McIntyre v. School Trustees, 3 Ill. App. 77; Stern v. People, 96 Ill. 475.

[60] Bessinger v. Dickerson, 20 Iowa 260; Thompson v. Dickerson, 22 Iowa 360.

[61] Bissell v. Saxton, 77 N. Y. 191; Patterson v. Inhabitants &c., 38 N. J. L. 255; Street v. Laurens, 5 Rich. Eq. (S. C.) 227; Heuitt v. State, 6 Har. & J. (Md.) 95; s. c. 14 Am. D. 259; Inhabitants &c. v. Randall, 105 Mass. 295; s. c. 7 Am. R. 519. The sureties upon the last bond should be treated precisely as if their principal had not been the incumbent of the office during the preceding term: City of Paducah v. Cully, 9 Bush (Ky.) 323; City of Detroit v. Weber, 29 Mich. 24; Vivian v. Otis, 24 Wis. 518; s. c. 1 Am. R. 199. For cases where the sureties were held not liable for moneys which either in fact or in contemplation of law came into his possession during the term subsequent to that for which they became his sureties, see Bryan v. United States, 1 Black 140; Tyler v. Nelson, 14 Gratt. (Va.) 214; Heuitt v. State, 6 Har. & J. (Md.) 95; s. c. 14 Am. D. 259.

[62] Board of Education v. Fonda, 77 N. Y. 350; De Hart v. McGuire, 10 Phila. (Pa.) 359; Moore v. Madison Co., 38 Ala. 670; State v. Van Pelt, 1 Ind. 304; Morley v. Town of Metamora, 78 Ill. 394; s. c. 20 Am. R. 266.

after the termination of his office. Thus, if a sheriff has levied a writ, it will be his duty to proceed to advertise. And if a public administrator, or one who from his official position is charged with the administration of the estates of decedents, has had committed to him the administration of a particular estate, it is his duty to proceed to the completion of such administration, though the period for which he was elected has expired. In either case the officer may be re-elected and enter upon the discharge of his duties for a second term, but if he does so the sureties of the first term are answerable for his defaults.[63]

§ 337. (c) **When the sureties of the first term are liable for money converted or collected by the officer during his second term.**—The proper test in such cases seems to be to inquire whether the officer had so far entered upon the execution of a writ before his first term expired that it would have been his duty to continue in the execution of such writ, even if he had not been re-elected; where this is the case the sureties for the first term have in many states been held liable.[64] On the other hand, it has been held in some states that the liability of the sureties attaches upon the receipt of the writ, whether anything is done under it during the term or not.[65] In Missouri and Alabama the rule is that those who were sureties at the actual time of the conversion are liable, though the officer began to serve the writ during his prior term of office.[66]

§ 338. (d) **When an officer before entering on his second term makes a report to or settlement with the proper authorities.**—It has been held in many states that where an officer who is about to enter

[63] People v. Ten Eyck, 13 Wend. (N. Y.) 448; Tyler v. Nelson's Adm'r, 14 Gratt. (Va.) 214; Dabney's Adm'r v. Smith, 5 Leigh (Va.) 13; State v. Watts, 23 Ark. 304. In Tennessee it has been held that if the sheriff, after collecting a portion of the county taxes, is required to give a new bond and does so, his sureties on such new bond are liable for the moneys collected before its execution: Miller v. Moore, 3 Humph. (Tenn.) 189.

[64] Larned v. Allen, 13 Mass. 295; Tyree v. Wilson, 9 Gratt. (Va.) 59; Campbell v. Cobb, 2 Sneed (Tenn.) 18; Hill v. Fitzpatrick, 6 Ala. 314; Sidner v. Alexander, 31 Ohio St. 378. Where a writ is received by a public officer during the first term and remains in his hands wholly unexecuted until he enters upon the duties of the office for the second term, the sureties for the last term are liable for his neglect to execute it, or to pay over the moneys which may be received under it: State v. Roberts, 12 N. J. L. 132.

[65] State v. Turney, 8 Gill & J. (Md.) 125; McCormick v. Moss, 41 Ill. 352.

[66] Warren v. State, 11 Mo. 583; Ingram v. McCombs, 17 Mo. 558; State v. McCormack, 50 Mo. 568; Governor v. Robbins, 7 Ala. 79; Dumas v. Patterson, 9 Ala. 484.

upon the discharge of his duties for a second term makes a report to or a settlement with the proper authorities, from which it appears that he has on hand at the close of his first term a certain sum of money, such settlement is conclusive upon his sureties for the second term as well as upon himself if the officers with whom the settlement is made act in good faith and have no knowledge that the sum of money which he reports is not actually in his hands.[67] On the other hand, it has been held that an official bond is not retrospective; that the sureties thereto are only bound for the public money in the hands of the officer when the bond was executed and for that which subsequently came into his possession, and can not be held for past derelictions of duty by their principal.[68]

§ 339. **The same subject continued.**—If a public officer—such, for instance, as a receiver of public moneys—gives receipts for moneys which he has not in fact received, whereby a fraud is perpetrated on the United States, his sureties at the time are doubtless estopped from denying that he received such money.[69] But where the sureties for a subsequent term are pursued a different question arises: the weight of authorities favors the rule that the sureties of a public officer are not estopped by reports made by their principal during or at the close of the preceding term.[70]

[67] State v. Grammer, 29 Ind. 530; Morley v. Town of Metamora, 78 Ill. 394; s. c. 20 Am. R. 266; Baker v. Preston, 1 Gilm. (Va.) 235; Roper v. Trustees &c., 91 Ill. 518; s. c. 33 Am. R. 60. The reasoning on this subject has been more forcibly stated by the supreme court of Iowa than elsewhere in deciding the case of Boone Co. v. Jones, 54 Iowa 699; s. c. 2 N. W. 987; 7 N. W. 155; 37 Am. R. 229. As against the officer himself, his reports are conclusive: State v. Hutchinson, 60 Iowa 478; s. c. 15 N. W. 298.

[68] Mahaska Co. v. Ingalls, 16 Iowa 81; Bessinger v. Dickerson, 20 Iowa 260; Warren Co. v. Ward, 21 Iowa 84; Independent School Dist. v. McDonald, 39 Iowa 564. Where at the time of settlement by a county treasurer the board of supervisors did not in fact insist on the production of the moneys which his account showed to be on hand, but permitted him to make an apparent showing with checks and certificates of deposit which they knew to be either spurious or worthless, it was held that the sureties on his bond for the second term were not estopped by such settlement, and could be relieved from liability by showing the real amount which their principal had on hand at the end of his former term of office: Webster Co. v. Hutchinson, 60 Iowa 721; s. c. 9 N. W. 901; 12 N. W. 534.

[69] United States v. Girault, 11 How. 22.

[70] Bissell v. Saxton, 66 N. Y. 55; Mann v. Yazoo City, 31 Miss. 574; Broad v. City of Paris, 66 Tex. 119; s. c. 18 S. W. 342; State v. Newton, 33 Ark. 276; State v. Rhoades, 6 Nev. 352; Vivian v. Otis, 24 Wis. 518; s. c. 1 Am. R. 199. The leading case on this subject is that of United States v. Boyd, 5 How. 29, in which the court said:—"It has been con-

§ 340. (e) Where the officer applies money received in his second term to pay deficiencies in his first term.—The right of an officer to direct the application of payments made by him seems now to be as well established as that of a private individual, though in directing such application he may, in effect, take moneys which he has collected during his second term, and with them satisfy the deficiency which existed at the close of the former term, and thus shift the responsibility for such deficiency from the sureties of his first term to those of the second.[71] The reasoning sustaining these decisions is that the sureties of the second term are responsible for any misappropriation of the moneys collected during that term; and the taking of such moneys, and with them paying a deficiency existing during a preceding term, is as much a misappropriation as though they were taken and used in payment of a private debt of the principal, or for any other purpose to which he had no right to apply them.[72]

tended that the returns of the receiver to the treasury department after the execution of the bond, which admit the money to be then in his hands to the amount claimed, should be conclusive upon the sureties. We do not think so. The accounts rendered to the department of money received properly authenticated are evidence in the first instance of the indebtedness of the officer against the sureties, but subject to explanation and contradiction. They are responsible for all the public moneys which were in his hands at the date of the bond, or that may have come into them afterwards, and not properly accounted for, but not for moneys which the officer may choose falsely to admit in his hands in his accounts with the government. The sureties can not be concluded by fabricated accounts of their principal with his creditors; they may always inquire into the reality and truth of the transactions existing between them. The principle has been asserted and applied by this court in several cases."

[71] Stone v. Seymour, 15 Wend. (N. Y.) 19; Inhabitants &c. v. Benjamin, 125 Mass. 15; Town of Lyndon v. Miller, 36 Vt. 329; Attorney-General v. Manderson, 12 Jur. 383; Williams v. Rawlinson, 10 Moore 362, 371; State v. Smith, 26 Mo. 226; s. c. 72 Am. D. 204; State v. Smith, 32 Mo. 524; State v. Hayes, 7 La. An. 118, 121; State v. Powell, 40 La. An. 234; s. c. 4 So. 46; 8 Am. St. 522; Inhabitants &c. v. Bell, 9 Met. (Mass.) 499; Gwynne v. Burnell, 7 Cl. & F. 572; s. c. 2 Bing. N. C. 7; Chapman v. Commonwealth, 25 Gratt. (Va.) 721; § 326, ante.

[72] Where a public official pays money without any direction respecting its application, and the officers to whom the payment is made know the source from which the moneys were obtained, and the application of them which ought in justice and equity to be made, they are not at liberty to make an application which will divert the moneys from the discharge of the obligation to which they ought to be applied. Hence, if such officers know that moneys have been collected by an official during his present term of office, and he does not direct their application, they are not at liberty to apply them to the satisfaction of a balance due from him for some preceding term: Inhabitants &c. v. Stanley, 47 Maine 515; Boring v. Williams, 17 Ala. 510.

§ 341. (f) **Where the bond is given for a term of office or a certain period of time.**—The American doctrine seems to be that where persons have become sureties on an official bond for a stated period of time or during a particular term of office their liability can not be continued indefinitely by reason of the failure of the successor of their principal to qualify. And it makes no difference whether their principal is re-elected, or some other person is chosen in his stead: new bonds must be given. The liability of the sureties will not terminate immediately upon the expiration of the official term; but if no officer qualifies within a reasonable time they will be discharged from all further responsibility, although their principal may in fact continue in the discharge of the duties of the office.[73] When the office is in fact annual, although not so recited in the bond, still the bond only covers the official acts of the year for which it was given.[74]

§ 342. **Laches or negligence of other officers or principal.**—Sureties on official bonds can not set up laches or omissions of other officers of the state as a ground of discharge of their own liability; nor is the ineligibility or disqualification of their principal any defense to an action against them on his bond.[75] And it has been held that even if the government is guilty of negligence, or the principal has committed fraud, the surety is not discharged by reason thereof.[76]

[73] United States v. Kirkpatrick, 9 Wheat. 720; Kingston &c. Ins. Co. v. Clark, 33 Barb. (N. Y.) 196; Mayor &c. v. Crowell, 40 N. J. L. 207; s. c. 29 Am. R. 224; Welch v. Seymour, 28 Conn. 387; Bigelow v. Bridge, 8 Mass. 275; Rany v. Governor, 4 Blackf. (Ind.) 2; Mutual Loan &c. Ass'n v. Price, 16 Fla. 204; s. c. 26 Am. R. 703; Dover v. Twombly, 42 N. H. 59; Commonwealth v. Fairfax, 4 Hen. & M. (Va.) 208; Wapello Co. v. Bigham, 10 Iowa 39; s. c. 74 Am. D. 370; Moss v. State, 10 Mo. 338; s. c. 47 Am. D. 116; State v. Crooks, 7 Ohio (pt. 2) 221; Riddel v. School Dist., 15 Kan. 168; Chelmsford Co. v. Demarest, 7 Gray (Mass.) 1. The sureties of a town treasurer who holds over for a second term without giving a new bond are not liable, notwithstanding the law provides that the term of officers shall continue until their successors are elected and qualified: City of Ballard v. Thompson, 21 Wash. 669; s. c. 59 Pac. 517.

[74] Peppin v. Cooper, 2 B. & Ald. 431; Hassell v. Long, 2 M. & S. 363; Wardens of St. Saviours v. Bostock, 2 Bos. & P. N. R. 175; Company &c. v. Atkinson, 6 East 507; Arlington v. Merricke, 2 Saund. 411.

[75] State v. Hayes, 7 La. An. 118; Duncan v. State, 7 La. An. 377; State v. Dunn, 11 La. An. 549; Mayor v. Merritt, 27 La. An. 568; Board &c. v. Brown, 33 La. An. 383; State v. Blohm, 26 La. An. 538; Board v. Judice, 39 La. An. 896; s. c. 2 So. 792; State v. Powell, 40 La. An. 234; s. c. 4 So. 46; 8 Am. St. 522. The case of Mayor v. Blache, 3 Miller (La.) 618, learnedly and scientifically disposes of the defense of error based on concealment or failure to give notice of prior defalcation.

[76] Osborne v. United States, 86 U.

§ 343. Liability of sureties where additional bonds are given.—Where a bond given by an official is regarded as inadequate in amount, he is sometimes required to give an "additional bond" in such further amount as may be required by competent authority. The sureties on the additional bond are not liable for any defalcation committed by their principal prior to its date, nor are the sureties on the prior bond given by him released from liability for any of his defalcations, past or future;[77] both bonds become concurrent securities that the principal will faithfully perform his duties after the giving of the last bond. But it must not be understood that the term "additional bond" indicates that it is a bond which can be resorted to only after the remedies against the other bond have been exhausted; for on the contrary, the liability of the sureties on the two bonds is the same regarding acts committed after the signing of the last bond, as if they had become sureties at the same time and by the same bond.[78]

§ 344. Liability of surety where the official occupies two or more offices.—When one person at the same time occupies two or more offices, they should be treated, as far as possible, as though they were occupied by different persons. The result is, that a default in one office can not be charged against the sureties on the official bond of the officer as the incumbent of the other office.[79] Thus, where a sheriff is ex officio tax collector, but the offices are separate and distinct, separate bonds being given for each, the sureties on his bond as collector are not liable for acts committed by him as sheriff; nor can they take advantage of the statutory time within which actions must be brought upon a sheriff's bond.[80] But where a person holds two offices, one of them ex officio, and they are so closely connected that only

S. 577; Ryan v. United States, 86 U. S. 514.

[77] Postmaster-General v. Munger, 2 Paine 189; Sebastian v. Bryan, 21 Ark. 447. If moneys collected before the additional bond was executed are afterwards converted by the principal, the sureties on both the original and the additional bond are liable: Governor v. Robbins, 7 Ala. 79; Dumas v. Patterson, 9 Ala. 484.

[78] Jones v. Hays, 3 Ired. Eq. (N. C.) 502; s. c. 44 Am. D. 78; Hutchcraft v. Shrout's Heirs, 1 T. B. Mon. (Ky.) 206; s. c. 15 Am. D. 100; United States v. Hoyt, 1 Blatchf. 326; State v. Watts, 23 Ark. 304; State v. Sappington, 67 Mo. 529; s. c. 68 Mo. 454; Jones v. Blanton, 6 Ired. Eq. (N. C.) 115, 120; Allen v. State, 61 Ind. 268; s. c. 28 Am. R. 673.

[79] People v. Edwards, 9 Cal. 286. It has been held that where a clerk of the court is appointed receiver in a suit being carried on therein, the sureties on his official bond are not liable for acts committed by him in the course of receivership: Waters v. Carroll, 9 Yerg. (Tenn.) 102; State v. Odom, 86 N. C. 432; Syme v. Bunting, 91 N. C. 48.

[80] People v. Burkhart, 76 Cal. 606; s. c. 18 Pac. 776.

one bond is given for both, his sureties are liable for an act committed in either office, although only one may be named in the bond.[81]

§ 345. **Liability of surety for unofficial acts of officer.**—It is of course contemplated by the sureties on an official bond in incurring their liability that the acts of the officer for which they bind themselves shall be of an official character; that is to say, these acts must be such as the law imposes upon the incumbent of the office which their principal has assumed. As a natural consequence it flows from this consideration that the sureties are liable only for the official acts of their principal.[82] Thus, where money was paid to a notary public to be applied by him in canceling a mortgage, his sureties were not held liable for his defalcation, as the receipt of money for such a purpose was not among the official duties of a notary public.[83] And in a California case, where a city assessor collected taxes without statutory or other authority to make such collections, it was decided that his sureties could not be held.[84]

[81] Van Valkenbergh v. Mayor &c., 47 N. J. L. 146; People v. Stewart, 6 Ill. App. 62; Satterfield v. People, 104 Ill. 448. In the case of Butte Co. v. Morgan, 76 Cal. 1; s. c. 18 Pac. 115, it was shown that the defendant at the same time held the offices of tax collector and treasurer of the same county, and that in his capacity of tax collector he made a settlement with the county auditor in which they agreed upon the amounts then due to the county, and the auditor thereupon gave a certificate which stated that "William J. Morgan, tax collector, has this day the amount as given below, to be paid into the county treasury." The auditor handed the certificate to Morgan, who took it away with him, and the auditor credited the tax collector with the amount as paid, and charged the treasurer with it. Suit was brought against the sureties of Morgan as treasurer, and they set up the defense that there was no evidence to show that Morgan had become answerable as treasurer by ceasing to be liable as tax collector. The court decided, however, that there was, and found for the plaintiff.

[82] United States v. Adams, 24 Fed. 348; People v. Lucas, 93 N. Y. 585; Ward v. Stahl, 81 N. Y. 406; People v. Pennock, 60 N. Y. 421; Governor v. Perrine, 23 Ala. 807; State v. Blair, 76 N. C. 78; State v. Long, 8 Ired. L. (N. C.) 415; Cotton v. Atkinson, 53 Ark. 98; s. c. 13 S. W. 415; Bowers v. Fleming, 67 Ind. 541; Scott v. State, 46 Ind. 203; Wright v. Harris, 31 Iowa 272; Morgan v. Long, 29 Iowa 434; Bessinger v. Dickinson, 20 Iowa 260; Sample v. Davis, 4 Greene (Iowa) 117; Coleman v. Ormond, 60 Ala. 328; City of San Jose v. Welch, 65 Cal. 358; s. c. 4 Pac. 207; Hill v. Kemble, 9 Cal. 71; Lescouzeve v. Ducatel, 18 La. An. 470; State v. Bonner, 72 Mo. 387; Watson v. Smith, 26 Pa. St. 395; Hale v. Commonwealth, 8 Pa. St. 415; State v. White, 10 Rich. L. (S. C.) 442; State v. Conover, 28 N. J. L. 224.

[83] Lescouzeve v. Ducatel, 18 La. An. 470.

[84] City of San Jose v. Welch, 65 Cal. 358; s. c. 4 Pac. 207. A similar

§ 346. The same subject continued.—In several states it has been held that the sureties of a constable are not liable for his default in failing to account for moneys collected by him, when the claims were placed in his hands for collection in a personal and not in an official capacity;[85] and a similar doctrine has been applied in Tennessee to the liability of the sureties of a sheriff.[86] So, also, the sureties of a sheriff are not liable for his failure to protect a person from an attack of a mob.[87] Where the sheriff of a Maine county served a writ without lawful authority to do so, no liability was thereby imposed upon his sureties.[88] It is to be noted, however, that when the act is done under color of office, the sureties may be held liable even for an unauthorized and illegal act of the officer; as in the case of a Massachusetts constable who seized goods under color of a process which he had no legal power to execute: his sureties were notwithstanding held to be liable on the ground that although he had no sufficient warrant for taking them, he was still responsible to third parties because such taking was a breach of his official duty.[89] The sureties on the bond of the mayor are liable for his acts done under color of office and in the line of his official duty, but which are beyond his authority.[90]

§ 347. Liability of sureties for acts done under color of office.—There are many acts which, although illegal, are yet performed under color of office, and are therefore official acts; for these acts the sureties on official bonds are of course liable. This question frequently arises where the officer seizes under an execution or a writ of attachment or other similar process the property of a person other than the defendant in the action. The question whether under these circumstances the sureties on the bond of the officer are liable for his act has been differently decided in different states. In the supreme court of the United States and in the courts of most of the states it is now well settled that the act is an official act, as done under color of office, and that the sureties on the bond are therefore liable.[91]

doctrine obtains in the case of private corporations. Thus, the sureties of an assistant clerk in a bank are not liable for his default as bookkeeper: Manufacturers' Nat'l Bank v. Dickerson, 41 N. J. L. 448; s. c. 32 Am. R. 237; Rollstone Nat'l Bank v. Carleton, 136 Mass. 226. In the last-cited case the doctrine stated is not expressly affirmed but is strongly implied.

[85] Bogart v. Green, 8 Mo. 115; Crittenden v. Terrill, 2 Head (Tenn.) 588.

[86] Haynes v. Bridge, 1 Coldw. (Tenn.) 32.

[87] South v. Maryland, 18 How. 396.

[88] Dane v. Gilmore, 51 Maine 544.

[89] City of Lowell v. Parker, 10 Met. (Mass.) 309.

[90] State v. McDaniel, 78 Miss. 1; s. c. 27 So. 994.

[91] Lammon v. Feusier, 111 U. S. 17; s. c. 4 S. Ct. 286; Carmack v. Com-

The law on this subject was laid down and the authorities collated in an able and exhaustive opinion by Mr. Justice Gray in a recent case in the supreme court of the United States, which is quoted in the succeeding sections.[92]

§ 348. The same subject continued—Lammon v. Feusier—The doctrine of the federal supreme court.—"The marshal, in serving a writ of attachment on mesne process, which directs him to take the property of a particular person, acts officially. His official duty is to take the property of that person, and of that person only; and to take only such property of his as is subject to be attached, and not property exempt by law from attachment. A neglect to take the attachable property of that person, and a taking, upon the writ, of the property of another person, or of property exempt from attachment, are equally breaches of his official duty. The taking of the attachable property of the person named in the writ is rightful; the taking of the property of another person is wrongful; but each, being done by the marshal in executing the writ in his hands, is an attempt to perform his official duty, and is an official act. A person other than the defendant named in the writ, whose property is wrongfully taken, may indeed sue the marshal, like any other wrong-doer, in an action of trespass, to recover damages for the wrongful taking; and neither the official character of the marshal, nor the writ of attachment, affords him any defense to such an action.[93] But the remedy of a person, whose property is wrongfully taken by the marshal in officially executing his writ, is not limited to an action against him personally. His official bond is not made to the person in whose behalf the writ is issued, nor to any other individual, but to the government, for the indemnity of all persons injured by the official misconduct of himself or his deputies;[94] and his bond may be put in suit by and for the benefit of any such person."

§ 349. The same subject continued.—"When a marshal, upon a writ of attachment on mesne process, takes property of a person not named in the writ, the property is in his official custody, and under the control of the court whose officer he is, and whose writ he is exe-

monwealth, 5 Binn. (Pa.) 184; Archer v. Noble, 3 Greenl. (Maine) 418; Harris v. Hanson, 2 Fairf. (Maine) 241, 243; Tracy v. Goodwin, 5 Allen (Mass.) 409; Sangster v. Commonwealth, 17 Gratt. (Va.) 124. And see other cases cited in the succeeding sections.

[92] Lammon v. Feusier, 111 U. S. 17; s. c. 4 S. Ct. 286.

[93] Citing Day v. Gallup, 2 Wall. 97; Buck v. Colbath, 3 Wall. 334.

[94] See United States v. Moore, 2 Brock. C. C. 317.

cuting; and, according to the decisions of this court, the rightful owner can not maintain an action of replevin against him, nor recover the property specifically in any way, except in the court from which the writ issued.[95] The principle upon which those decisions are founded is, as declared by Mr. Justice Miller in Buck v. Colbath,[96] above cited, 'that whenever property has been seized by an officer of the court, by virtue of its process, the property is to be considered as in the custody of the court, and under its control for the time being; and that no other court has a right to interfere with that possession, unless it be some court which may have a direct supervisory control over the court whose process has first taken possession, or some superior jurisdiction in the premises.' Because the law had been so settled by this court, the plaintiff in this case failed to maintain replevin in the courts of the state of Nevada against the marshal, for the very taking which is the ground of the present action.[97] For these reasons the court is of opinion that the taking of goods, upon a writ of attachment, into the custody of the marshal, as the officer of the court that issues the writ, is, whether the goods are the property of the defendant in the writ or of any other person, an official act, and therefore, if wrongful, a breach of the bond given by the marshal for the faithful performance of the duties of his office."

§ 350. The same subject continued—The doctrine of the state courts.—"Upon the analogous question, whether the sureties upon the official bond of a sheriff, a coroner, or a constable are responsible for his taking upon a writ, directing him to take the property of one person, the property of another, there has been some difference of opinion in the courts of the several states. The view that the sureties are not liable in such a case has been maintained by decisions of the supreme courts of New York, New Jersey, North Carolina and Wisconsin, and perhaps receives some support from decisions in Alabama, Mississippi and Indiana."[98]

[95] Citing Freeman v. Howe, 24 How. 450; Krippendorf v. Hyde, 110 U. S. 276; s. c. 4 S. Ct. 27.

[96] 3 Wall. 334, 341.

[97] Citing Feusier v. Lammon, 6 Nev. 209.

[98] Citing Ex parte Reed, 4 Hill (N. Y.) 572; People v. Schuyler, 5 Barb. (N. Y.) 166; State v. Conover, 4 Dutch. (N. J.) 224; State v. Long, 8 Ired. L. (N. C.) 415; State v. Brown, 11 Ired. L. (N. C.) 141; Gerber v. Ackley, 32 Wis. 233; Governor v. Hancock, 2 Ala. 728; McElhaney v. Gilleland, 30 Ala. 183; Brown v. Mosely, 11 Sm. & M. (Miss.) 354; Jenkins v. Lemonds, 29 Ind. 294; Carey v. State, 34 Ind. 105. "But," continues the opinion, "in People v. Schuyler, 4 N. Y. 173, the judgment in 5 Barb. (N. Y.) 166, was reversed, and the case of Ex parte Reed, 4 Hill (N. Y.) 572, overruled by a majority of the New York court of appeals, with the concurrence of Chief Justice Bronson, who had taken part

§ 351. The same subject continued.—Mr. Justice Gray continues: "And the liability of the sureties in such cases has been affirmed by a great preponderance of authority, including decisions in the highest courts of Pennsylvania, Maine, Massachusetts, Ohio, Virginia, Kentucky, Missouri, Iowa, Nebraska, Texas and California, and in the supreme court of the District of Columbia."[99] In State v. Jennings[99a] Chief Justice Thurman said: "The authorities seem to us quite conclusive, that a seizure of the goods of A under color of process against B is official misconduct in the officer making the seizure; and is a breach of the condition of his official bond, where that is, that he will faithfully perform the duties of his office. The reason for this is, that the trespass is not the act of a mere individual, but is perpetrated colore officii. If an officer, under color of a fi. fa., seize property of the debtor that is exempt from execution, no one, I imagine, would deny, that he had broken the condition of his bond. Why should the law be different if, under color of the same process, he take the goods of a third person? If the exemption of the goods from the execution in the one case, makes their seizure official misconduct, why should it not have the like effect in the other? True, it

in deciding Reed's case. The final decision in People v. Schuyler, 4 N. Y. 173, has been since treated by the court of appeals as settling the law upon this point: Mayor &c. v. Sibberns, 3 Abb. App. Dec. (N. Y.) 266; s. c. 7 Daly (N. Y.) 436; Cummings v. Brown, 43 N. Y. 514; People v. Lucas, 93 N. Y. 585." In addition to the state courts mentioned by the learned justice as holding that the sureties are not liable under the circumstances under consideration may be mentioned the supreme court of Maryland: State v. Brown, 54 Md. 318. It is also to be noted that State v. Druly, 3 Ind. 431, is in conflict with Jenkins v. Lemonds, 29 Ind. 294, the former case affirming the liability of the sureties under the circumstances considered.

[99] Citing Carmack v. Commonwealth, 5 Binn. (Pa.) 184; Brunott v. McKee, 6 W. & S. (Pa.) 513; Archer v. Noble, 3 Greenl. (Maine) 418; Harris v. Hanson, 2 Fairf. (Maine) 243; Greenfield v. Wilson, 13 Gray (Mass.) 384; Tracy v. Goodwin, 5 Allen (Mass.) 409; Sangster v. Commonwealth, 17 Gratt. (Va.) 124; Commonwealth v. Stockton, 5 T. B. Mon. (Ky.) 192; Jewell v. Mills, 3 Bush (Ky.) 62; State v. Moore, 19 Mo. 369; State v. Fitzpatrick, 64 Mo. 185; Charles v. Haskins, 11 Iowa 329; Turner v. Killian, 12 Neb. 580; s. c. 12 N. W. 101; Holliman v. Carroll's Adm'r, 27 Tex. 23; Van Pelt v. Littler, 14 Cal. 194; United States v. Hine, 3 MacArth. (D. C.) 27. The courts of Georgia and Illinois also concur in the conclusions of Mr. Justice Gray: Jefferson v. Hartley, 81 Ga. 716; s. c. 9 S. E. 174; Jones v. People, 19 Ill. App. 300. In addition to these cases cited in Lammon v. Feusier may be mentioned as supporting the doctrine of the text, Strunk v. Ocheltree, 11 Iowa 158; Hubbard v. Elden, 43 Ohio St. 380; s. c. 2 N. E. 434; Forsythe v. Ellis, 4 J. J. Marsh. (Ky.) 298; Turner v. Sisson, 137 Mass. 191; People v. Mersereau, 74 Mich. 687; s. c. 42 N. W. 153.

[99a] 4 Ohio St. 418.

may sometimes be more difficult to ascertain the ownership of goods, than to know whether a particular piece of property is exempt from execution; but this is not always the case, and if it were, it would not justify us in restricting to litigants, the indemnity afforded by the official bond, thus leaving the rest of the community with no other indemnity against official misconduct than the responsibility of the officer might furnish."

§ 352. **Illustrations of the doctrine.**—In some cases where the officer or agent had the legal right and authority to receive the money in respect to which he defaulted, he did not receive the funds according to the manner prescribed by statute. Thus, in North Carolina, a judgment debtor paid a sheriff before the issue of execution a sum of money to be applied in payment of the judgment. The sheriff defaulted in respect to the money, and his sureties were exonerated from liability on the ground that the receipt of the money by the sheriff before execution issued was an unofficial act.[100] It is not sufficient that there is a custom authorizing the defaulting officer to receive the money in respect to which he has defaulted: it must be his legal right and duty to receive the funds;[101] and the general rule may be stated to be that the sureties of an officer incur no liability in respect to money received by him where the statute does not require him to receive the money.[102]

§ 353. **Distinction between judicial and ministerial duties.**—The same distinction between the judicial and the ministerial acts of public officers obtains in this branch of the subject under discussion as where the personal liability of officers and agents and the liability of the corporation for their acts was considered.[103] As the officer is not in general personally liable for his misfeasance or nonfeasance in the discharge of a judicial duty, and as the corporation itself is

[100] State v. Allen, 7 Jones L. (N. C.) 564. And in several states it has been held where an officer seized property under process, and afterwards by agreement of the parties sold that property in a manner different from the mode prescribed by law, that the sureties were not liable for default of the officer in respect to the proceeds of the sale: Webb v. Anspach, 3 Ohio St. 522; Governor v. Perrine, 23 Ala. 807; Schloss v. White, 16 Cal. 65.

[101] Carey v. State, 34 Ind. 105; Hardin v. Carrico, 3 Met. (Ky.) 289. In the last-cited case it was pleaded that there was a custom that the clerk should receive all moneys paid into court, although there was no statutory authority for his doing so. His sureties were held not liable on the ground that the receipt of the moneys by him was not an official act.

[102] Ward v. Stahl, 81 N. Y. 406; Smith v. Stapler, 53 Ga. 300; Branch v. Commonwealth, 2 Call (Va.) 510; Saltenberry v. Loucks, 8 La. An. 95.

[103] Ante, § 215 et seq.

not liable in such case, so the sureties upon his bond can not be held for such act or omission.[104] This general rule is obvious, but there is often great difficulty in determining whether the particular act under consideration is a judicial or a ministerial act. This is especially the case in considering the liability of the sureties of justices of the peace and of highway commissioners—from the nature of each office it is evident that it is frequently difficult to differentiate these two classes of duties. It is perhaps impossible to lay down any general rule to determine to which class a particular act belongs; the circumstances of each case must be considered before a conclusion can be reached.

§ 354. Illustrations of the doctrine.—The act of a justice of the peace in entering judgment and issuing execution thereon before the time prescribed by law has been held in South Carolina to be a judicial and not a ministerial act.[105] And so, also, the adjournment of a case against the objection of the plaintiff, where the defendant did not appear, was considered in a recent New York case to be an act of a judicial character, although by the provisions of the statute the justice was required to enter judgment upon the failure of the defendant to appear.[106] These acts being judicial in character, it is not competent for the court to inquire into the motive of the justice; and neither the justice nor his sureties incur any liability therefor.[107]

[104] Place v. Taylor, 22 Ohio St. 317; McGrew v. Governor, 19 Ala. 89. This is of course a necessary consequence of the freedom of the officer and the corporation from liability for the errors of the officer in the performance of a judicial duty.

[105] Abrams v. Carlisle, 18 S. C. 242.

[106] Merwin v. Rogers, 24 N. Y. St. 496.

[107] Throop Public Officers, § 733. The learned author collates a number of cases in each of which the act of the justice was decided to be judicial and not ministerial in its character. Among them may be mentioned the following:—An error of the justice in directing the writ to the sheriff or any constable, where the statute required that the writ should be directed to the sheriff: Allec v. Reese, 39 Fed. 341. The act of a justice in giving judgment for costs where the law gave him no authority to do so: White v. Morse, 139 Mass. 162; s. c. 29 N. E. 539. Entering judgment for less than the sum proved to be due: Kress v. State, 65 Ind. 106. Accepting an informal recognizance: Chickering v. Robinson, 3 Cush. (Mass.) 543. Error in refusing to grant an appeal: Jordan v. Hanson, 49 N. H. 199. Error in determining the sufficiency of bail: Lining v. Bentham, 2 Bay (S. C.) 1. See also, on this subject, Fisher v. Deans, 107 Mass. 118; Johnston v. Moorman, 80 Va. 131; Heard v. Harris, 68 Ala. 43. The following acts of justices of the peace have been held to be ministerial; for these acts, therefore, their sureties would be bound:—Refusing to issue a writ of execution upon a judgment entered by him: Fairchild v. Keith, 29 Ohio St. 156. Issuing an execution void

§ 355. The same subject continued.—The same rule applies in considering the liability of sureties upon the bonds of highway commissioners. The duties of these officers as of justices of the peace are of a twofold nature: some of these duties are judicial, others are ministerial. Their judicial duties, according to Mr. Throop, include those which are connected with the opening, discontinuing, closing and general management of highways, together with the assessment of damages or of benefits thereon. For any act done in the performance of these duties they, and consequently their sureties, are not liable so long as the act is within the jurisdiction of the officer as defined by statute.[108] It is, however, a ministerial duty for these officers to keep the highways in repair if they have sufficient funds to do so; and it is also a ministerial duty for them, if practicable, to

upon its face: Noxon v. Hill, 2 Allen (Mass.) 215. Rendering a judgment exceeding his jurisdiction: Estopinal v. Peyroux, 37 La. An. 477. Issuing a warrant of attachment or of arrest in a case where he was not authorized at law to issue such process: Wright v. Rouss, 18 Neb. 234; s. c. 25 N. W. 80; Truesdell v. Combs, 33 Ohio St. 186. See also, for similar instances collated in Throop Public Officers, § 734: Inos v. Winspear, 18 Cal. 397; Briggs v. Wardwell, 10 Mass. 356; Sullivan v. Jones, 2 Gray (Mass.) 570; Fisher v. Deans, 107 Mass. 118; Albee v. Ward, 8 Mass. 79; State v. Carrick, 70 Md. 586; s. c. 17 Atl. 559; Spencer v. Perry, 17 Maine 413; Grumon v. Raymond, 1 Conn. 40; Tracy v. Williams, 4 Conn. 107; Flack v. Harrington, 1 Ill. 213; Adkins v. Brewer, 3 Cow. (N. Y.) 206; Clarke v. May, 2 Gray (Mass.) 410; Piper v. Pearson, 2 Gray (Mass.) 120; Doggett v. Cook, 11 Cush. (Mass.) 262; Shaw v. Reed, 16 Mass. 450; Welch v. Gleason, 28 S. C. 247; s. c. 5 S. E. 599; Kelly v. Moore, 51 Ala. 364; Lanpher v. Dewell, 56 Iowa 153; s. c. 9 N. W. 101; Revill v. Pettit, 3 Met. (Ky.) 314; Bore v. Bush, 6 Mart. N. S. (La.) 1; Terrail v. Tinney, 20 La. An. 444; Tyler v. Alford, 38 Maine 530; Kendall v. Powers, 4 Met. (Mass.) 553; Knowles v. Davis, 2 Allen (Mass.) 61; Guenther v. Whiteacre, 24 Mich. 504; Evertson v. Sutton, 5 Wend. (N. Y.) 280; Tompkins v. Sands, 8 Wend. (N. Y.) 462; Cunningham v. Bucklin, 8 Cow. (N. Y.) 178; Houghton v. Swarthout, 1 Denio (N. Y.) 589; Christopher v. Van Liew, 57 Barb. (N. Y.) 17; Blythe v. Tompkins, 2 Abb. Pr. (N. Y.) 468; Kerns v. Schoonmaker, 4 Ohio 331; Miller v. Grice, 2 Rich. L. (S. C.) 27; Morrill v. Thurston, 46 Vt. 732; Vaughn v. Congdon, 56 Vt. 111.

[108] Throop Public Officers, § 736; citing Elder v. Bemis, 2 Met. (Mass.) 599; Benjamin v. Wheeler, 15 Gray (Mass.) 486; Morrison v. Howe, 120 Mass. 565; Denniston v. Clark, 125 Mass. 216; Hatch v. Hawkes, 126 Mass. 177; Upham v. Marsh, 128 Mass. 546; Johnson v. Dunn, 134 Mass. 522; Sage v. Laurain, 19 Mich. 137; Highway Com'rs v. Ely, 54 Mich. 173; s. c. 19 N. W. 940; Larned v. Briscoe, 62 Mich. 393; s. c. 29 N. W. 22; Clark v. Phelps, 4 Cow. (N. Y.) 190; Van Steenbergh v. Bigelow, 3 Wend. (N. Y.) 42; Miller v. Brown, 56 N. Y. 383; Morse v. Williamson, 35 Barb. (N. Y.) 472; Harrington v. Commissioners &c., 2 McC. (S. C.) 400. Contra, Adams v. Richardson, 43 N. H. 212.

obtain the requisite and necessary funds; and for their official default in respect to these duties their sureties are considered to be liable.[109]

[109] Throop Public Officers, § 737; citing Pomfrey v. Village of Saratoga Springs, 104 N. Y. 459; s. c. 11 N. E. 43; People v. Board &c., 75 N. Y. 316; Hover v. Barkhoof, 44 N. Y. 113; and other cases.

CHAPTER XI.

MEETINGS AND ELECTIONS.

SECTION

356. Town meeting in New England and elsewhere.
357. Right to meeting—Mandamus to enforce.
358. Application for and authority to call a meeting.
359. Secondary authority to call a meeting.
360. General purpose of a warning.
361. Designation of time and place of meeting.
362. General and formal requisites of a warrant.
363. The same subject continued.
364. Service of warrant.
365. Time of service.
366. Return of service.
367. Notice of annual meetings.
368. The same subject continued.
369. Time of meeting.
370. Place of meeting.
371. Organization of meeting—The moderator.
372. The same subject continued—Clerk and clerk pro tempore.
373. Adjournments of meetings.
374. The same subject continued.
375. The power of adjournment limited.
376. Adjourned meetings.
377. Reconsideration and rescission—The general rule.
378. The same subject continued—Illustrations.
379. The same subject continued—The rule qualified.
380. Ratification of doings of invalid meetings.
381. Parliamentary law in town meetings.
382. The same subject continued—Illustrations.
383. Validity of votes as determined by the warrant—Illustrations.
384. The same subject continued.
385. Invalidity of votes — Illustrations.
386. The same subject continued.
387. Votes at town meeting—General rules of construction.
388. Record of proceedings.
389. Parol evidence of proceedings.
390. Doings of meetings not legally called.
391. Presumptions in favor of ancient meetings.
392. Notice of election.
393. Qualification of voters—Power to prescribe.
394. Registration acts.
395. Place of election.
396. The same subject continued.
397. Popular elections—Plurality.
398. The same subject continued—Majorities, etc.
399. Voting by ballot.
400. The same subject continued.
401. The Australian ballot and cumulative voting.
402. Absolute accuracy not required in a ballot.
403. Votes for ineligible candidates.
404. Putting up offices at auction—Tax collector.
405. City council as judge of election and qualification of its members.
406. Canvass and return and contest of elections.

§ 356. Town meetings in New England and elsewhere.—In a preceding chapter we have discussed the rules of law by which the meetings and proceedings of public boards are regulated.[1] We shall now consider some of the statutory and judicial regulations of "town meetings," a term which we apply generically to all popular meetings of the inhabitants of local communities—whether of strictly municipal corporations or of public quasi-corporations, such as school districts. The institution of town meetings in this country is coeval with the settlement of New England; and it is in the decisions of the courts of the states composing that section that we find the great body of the law on this subject. These gatherings of the people have been pronounced by students of political science who have closely examined their methods of operation and the influence exerted by them, to be the most potent agents in promoting the art of self-government that the world has ever known. "In a New England township the people directly govern themselves; the government is the people, or, to speak with entire precision, it is all the male inhabitants of one-and-twenty years of age and upwards. The people tax themselves. Once each year, usually in March, but sometimes as early as February or as late as April, a 'town meeting is held at which all the grown men of the township are expected to be present and to vote, while any one may introduce motions or take part in the discussion.' In early times there was a fine for non-attendance, but this is no longer the case; it is supposed that a due regard to his own interests will induce every man to come. The town meeting is held in the town house, but at first it used to be held in the church, which was thus a meeting house 'for civil as well as ecclesiastical purposes.' At the town meeting measures relating to the administration of town affairs are discussed and adopted or rejected; appropriations are made for the public expenses of the town, or, in other words, the amount of the town taxes for the year is determined and town officers are elected for the year."[2] But the administration of local affairs by means of town meetings is not now confined to the towns of New England, al-

[1] Public Boards, ch. 9, ante.

[2] Prof. Fiske's "Civil Government in the United States," p. 19. In another part of this work, which is an interesting and eloquent dissertation on town meetings, the author says:—"In the kind of discussion which it provokes, in the necessity of facing argument with argument, and of keeping one's temper under control, the town meeting is the best political training-school in existence. Its educational value is far higher than that of the newspaper, which in spite of its many merits as a diffuser of information is very apt to do its best to bemuddle and sophisticate plain facts." Ibid., p. 31. See also, "American Political Ideas," by the same author, ch. 1, Town Meetings.

though these are perhaps invested with more ample powers than are conferred upon them elsewhere: in many of the western states the township system with its town meeting for deliberative purposes is steadily supplanting or ceasing to become subordinate to the system of county government, and when tried under favorable conditions is not likely to be abandoned, except when of necessity an increase of population demands a representative borough or city government.[3]

§ 357. **Right to meeting—Mandamus to enforce.**—In Connecticut "special town meetings may be convened when the selectmen shall deem it necessary or on application of twenty inhabitants qualified to vote in town meetings." By judicial construction the last clause of this provision is mandatory to the selectmen, and the requisite number of voters have a right to demand that a meeting be called for any legitimate and proper purpose.[4] Although it is not competent for the petitioners to dictate to the selectmen the day and hour for the meeting to be held, it is no objection to the petition that it specifies the day and hour, for the selectmen may call a meeting at any reasonable time.[5] If, however, those officers neglect to perform their duty in the premises, the remedy is by mandamus; but all the selectmen must be made parties to the proceeding, and the writ can only issue in the name of the state as plaintiff.[6]

[3] See Prof. Fiske's treatise cited in the preceding note, p. 89 et seq.

[4] But the purpose must not be unlawful or manifestly frivolous or improper. See dissenting opinion of Phelps, J., in Lyon v. Rice, 41 Conn. 245, 251. There is no clear legal right to have a meeting called "to take action on resolutions to be offered [in the legislature] for the repeal of the charter of the borough." The court said that "the borough meeting is not the proper tribunal to pass upon that question:" Peck v. Booth, 42 Conn. 271, 274.

[5] Lyon v. Rice, 41 Conn. 245. Cf. Denniston v. School Dist., 17 N. H. 492, where it was held that the choice of day by the petitioners must not be disregarded.

[6] Peck v. Booth, 42 Conn. 271, 274; Lyon v. Rice, 41 Conn. 245. In the case last cited the court said:—"Whether the prosecuting officer alone may apply for and prosecute the writ or whether it may be prosecuted by any inhabitant of the town as relator is a question on which the authorities differ. It is held by some that any person having a general interest in the subject-matter may be a relator and prosecute the writ in the name of the state: People v. Collins, 19 Wend. (N. Y.) 56; Hamilton v. State, 3 Ind. 452; State v. County Judge, 7 Iowa 186; Hall v. People, 57 Ill. 307. By others it is held that it can only be prosecuted by a public officer: People v. Regents &c., 4 Mich. 98; Heffner v. Commonwealth, 28 Pa. St. 108; Bobbett v. State, 10 Kan. 9; Linden v. Alameda Co., 45 Cal. 6; Sanger v. Commissioners, 25 Maine 291; Bates v. Overseers &c., 14 Gray (Mass.) 163." See also, Wyandotte &c. Br. Co. v. Commissioners, 10 Kan. 331; Territory v. Cole, 3 Dak. 301; s. c. 19 N. W. 418; State v. Ware, 13 Or. 380; s. c. 10 Pac. 885. And cf. State

§ 358. Application for and authority to call a meeting.—Where a board has authority to call a meeting upon the application of a certain number of voters or freeholders the petition need not describe them as such;[7] and the decision of the board that the subscribers are qualified is final and conclusive.[8] An application for a school-district meeting bearing date before the town meeting at which it should be determined whether the district would be permitted to hold a meeting is premature and all action under it void.[9] Any signer of the petition may withdraw his name before action has been taken, and if a sufficient number do not remain the duty to call the meeting ceases.[10] A board of trustees having authority to call a meeting when in their judgment the interests of the district require it can act only at a regular session; and a call signed by two without notice to the other, who afterward refuses to sign it, is without any legal efficacy.[11] A meeting may be called by officers de facto: provided, of course, that the same officers de jure would have that power.[12] Where a school district has exercised a statutory right to prescribe the manner in which meetings shall be called they can not be convened in any other way so long as the vote remains unrescinded.[13]

v. Common Council &c., 33 N. J. L. 110; People v. Brooklyn Council, 77 N. Y. 503.

[7] "It is sufficient if they are such:" Fletcher v. Inhabitants &c., 20 Maine 439. A meeting called upon the application of less than the required number of persons is void: McVichie v. Town of Knight, 82 Wis. 137; s. c. 51 N. W. 1094.

[8] State v. Supervisors &c., 23 Minn. 521. Except, perhaps, the court said, upon a review in a direct proceeding. Contra, Ladd v. Clements, 4 Cush. (Mass.) 476; Fletcher v. Inhabitants &c., 20 Maine 439. See also, cases cited in the following section.

[9] School Dist. v. Lord, 44 Maine 374.

[10] Dutten v. Village of Hanover, 42 Ohio St. 215. The application need not be recorded: Roper v. Inhabitants &c., 28 Maine 193. And a statute requiring it is directory merely: State v. Supervisors, 58 Wis. 291; s. c. 17 N. W. 20.

[11] Bogert v. Trustees, 43 N. J. L. 358.

[12] Williams v. Inhabitants &c., 21 Pick. (Mass.) 75. Cf. Little v. Merrill, 10 Pick. (Mass.) 543.

[13] Hayward v. Inhabitants &c., 2 Cush. (Mass.) 419. The power given by statute to an ecclesiastical body to prescribe the mode of warning its meetings does not enable it to dispense with a warning by the committee: Society of Bethany v. Sperry, 10 Conn. 200. See further, for a construction of statutes and by-laws conferring authority to call school-district meetings, Stone v. Inhabitants &c., 8 Cush. (Mass.) 592 (authority to warn not authority to call); Little v. Merrill, 10 Pick. (Mass.) 543; Mason v. School Dist., 20 Vt. 487; Corliss v. Corliss, 8 Vt. 373. And that an application will be presumed, Chandler v. Bradish, 23 Vt. 416; Mason v. School Dist., 20 Vt. 487.

§ 359. **Secondary authority to call a meeting.**—Authority to call meetings is frequently given by statute to a certain officer or board contingent upon the neglect or refusal of others to perform the duty cast upon them in the first instance. In such cases the well-established principle that nothing can be presumed in favor of the jurisdiction of the parties acting under special authority[14] is generally applied, and the existence of the conditions precedent becomes an issuable fact; and if successfully controverted the result is so fatal that a tax collector appointed at a meeting founded on the call can not justify in an action of trespass.[14a] But where a school-district committee upon due application for a meeting on a day certain refused to call it, and, within the time allowed by statute, called a meeting for a day one month later than that specified, the court held it to be a "neglect * * * after application," etc., which authorized the selectmen to call a meeting;[15] and the same construction of the statute was adopted in a case where the meeting called upon the original application would have been illegal for want of sufficient notice.[16]

§ 360. **General purpose of a warning.**—The rationale of warnings of New England town meetings is, perhaps, placed upon a firmer foundation by Justice Gray of the United States supreme court than by any other jurist who has had occasion to discuss the subject. "In Connecticut, as in Massachusetts and Maine," said he, "by common law or immemorial usage the property of any inhabitant may be taken on execution upon a judgment against the town.[17] A town

[14] Little v. Merrill, 10 Pick. (Mass.) 543; Rossiter v. Peck, 3 Gray (Mass.) 538; Barrett v. Crane, 16 Vt. 246; Betts v. Bagley, 12 Pick. (Mass.) 572; Bennett v. Burch, 1 Denio (N. Y.) 141; Sharp v. Spier, 4 Hill (N. Y.) 76.

[14a] Brewster v. Hyde, 7 N. H. 206; Giles v. School Dist., 31 N. H. 304; Starbird v. Inhabitants &c., 51 Maine 101. A justice of the peace having authority to call a meeting upon application after an unreasonable refusal of the selectmen, is powerless to act if the majority of the selectmen have not been requested: Southard v. Inhabitants, 53 Maine 389; citing Ladd v. Clements, 4 Cush. (Mass.) 476; Fletcher v. Inhabitants &c., 20 Maine 439; Inhabitants &c. v. Stearns, 21 Pick. (Mass.) 148. Cf. State v. Supervisors &c., 23 Minn. 521, cited in note 8, ante.

[15] Denniston v. School Dist., 17 N. H. 492. If the committee could ignore the petitioner's desire in respect of the time, "it is plain," said the court, "that no special meeting could ever be held against their will." In Connecticut the officers are not in default if the day fixed by them is within a reasonable time: Lyon v. Rice, 41 Conn. 245.

[16] Pickering v. De Rochemont, 66 N. H. 377; s. c. 23 Atl. 88, where it was held that the warrant need not recite the neglect.

[17] Citing Atwater v. Inhabitants &c., 6 Conn. 223, 228; McLoud v. Selby, 10 Conn. 390; Beardsley v.

can not contract or authorize any officer or agent to make one except by vote in a town meeting duly notified or warned; and the notice or warning must specify the matter to be acted on in order that all the inhabitants (whose property will be subject to be taken on execution to satisfy the obligation of the town) may know in advance what business is to be transacted at the meeting."[18] This reason has also been adduced: "If the object of the meeting is specified it will present a motive to the inhabitants to be present and they will leave business even if it be pressing, provided they feel an interest in the subject to be determined. On the other hand, if the object is unimportant and any of the inhabitants should feel no concern in the result, they may with safety pursue their ordinary business; and this certainly is matter of convenience. The warning designating the object of the meeting is fair and in prevention of those little artifices which sometimes endanger the public peace and throw communities into animosities and divisions."[19] Again, it is to enable the people "to give the subject consideration previous to the meeting,"[20] and "that the will of individuals may not be subjected to the will of a majority any further than it is subjected by law."[21]

§ 361. **Designation of time and place of meeting.**—A statute provided that annual town meetings should be held at the place where the last meeting was held or at such other place as should have been ordered at a previous meeting. There was also a general provision that the doings of town meetings might be reconsidered upon motion made within a certain time.[22] It was decided that the mere fact that a majority of the ballots for town officers cast at a regular meeting contained words indicating the will of the voters that the next meeting should be held at a certain place named thereon was not a sufficient designation within the intent of the law. The proposition should have been submitted to the meeting as a deliberative body, and the election of an officer in the following year at the place assigned was declared to be void.[23] If an annual meeting neglects to

Smith, 16 Conn. 368; 5 Dane Abr. 158; Chase v. President &c., 19 Pick. (Mass.) 564, 569; Gaskill v. Dudley, 6 Met. (Mass.) 546; Adams v. President &c., 1 Greenl. (Maine) 361; Fernald v. Lewis, 6 Greenl. (Maine) 264; Hopkins v. Town of Elmore, 49 Vt. 176; Rev. Stats. N. H. 1878, ch. 239, § 8. See also, ch. 5, ante.

[18] Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865.

[19] Hayden v. Noyes, 5 Conn. 391, 396.

[20] Blush v. Town of Colchester, 39 Vt. 193, 196.

[21] Pittsburg v. Danforth, 56 N. H. 272.

[22] The power to reconsider does not depend on statute: See § 377 et seq., post.

[23] State v. Davidson, 32 Wis. 114. A charter provision that all warnings of city meetings "shall be is-

appoint a time and place under the power conferred by statute, and the latter makes no provision in case of such a failure, the proceedings of a meeting duly called by the proper authorities will be upheld;[24] but a statute providing for such an omission is mandatory.[25] A by-law prescribing seven days' notice of meetings is reasonable;[26] but an ordinance requiring a notice of not less than three months is void for unreasonableness.[27]

§ 362. **General and formal requisites of a warrant.**—The statutes, with only slight differences in phraseology, require the time, place and objects of a meeting to be specified in the notice, or warrant, as it is usually termed. It is not essential that it be addressed to the inhabitants or voters,[28] or that the application be recited in it;[29] and, in the absence of statute, no seal is required.[30] A date is not indispensable;[31] and if a warrant be issued by freeholders under statutory authority their naked signatures suffice.[32] It is valid if signed by a majority of the board having power to issue it;[33] and a meeting is "called by the * * * committee" when the warrant is signed by the clerk "by order of the * * * committee;"[34] but it is not "under the hands of the selectmen" where only one of the board

sued by the mayor and published in the manner designated in the by-laws of the city" delegates to the city the right to fix by a standing by-law the time and extent of such publication, and is not controlled by the general statutes which prescribe how town meetings shall be warned: Allen v. City of Burlington, 45 Vt. 202.

[24] Otherwise no annual meeting could ever afterwards be held: Sanborn v. School Dist., 12 Minn. 17.

[25] Marchant v. Langworthy, 6 Hill (N. Y.) 646; s. c. affirmed, 3 Denio (N. Y.) 526.

[26] Rand v. Wilder, 11 Cush. (Mass.) 294.

[27] Jones v. Inhabitants &c., 66 Maine 585.

[28] Baldwin v. Town of North Branford, 32 Conn. 47. See also, Pickering v. De Rochemont, 66 N. H. 377; s. c. 23 Atl. 88.

[29] Roper v. Inhabitants &c., 28 Maine 193; Sherwin v. Bugbee, 16 Vt. 439. See also, Pickering v. De Rochemont, 66 N. H. 377; s. c. 23 Atl. 88; Mason v. School Dist., 20 Vt. 487.

[30] Colman v. Anderson, 10 Mass. 105; Kingsbury v. School Dist., 12 Met. (Mass.) 99; Inhabitants &c. v. Spofford, 12 Maine 487.

[31] Denniston v. School Dist., 17 N. H. 492; Briggs v. Murdock, 13 Pick. (Mass.) 305.

[32] Sturm v. School Dist., 45 Minn. 88; s. c. 47 N. W. 462; citing Willis v. Sproule, 13 Kan. 257; Austin v. Allen, 6 Wis. 134; Washington Ice Co. v. Lay, 103 Ind. 48; s. c. 2 N. E. 222.

[33] Reynolds v. Inhabitants &c., 6 Met. (Mass.) 340. Cf. Bogert v. Trustees, 43 N. J. L. 358, cited in § 358, ante.

[34] Kingsbury v. School Dist., 12 Met. (Mass.) 99. See also, Smith v. Board &c., 45 Fed. 725. Otherwise if there is no previous authority or subsequent ratification: Society of Bethany v. Sperry, 10 Conn. 200.

signs "by order of the selectmen;"[35] and it is not "issued" by the mayor unless signed by him;[36] and a warrant signed by the proper officer, but without any official designation or anything in the document to indicate his official character, is fatally defective.[37] The year of the meeting ought to be specified,[38] and the hour[39] and place[40] are of vital importance.[41]

§ 363. The same subject continued.—Technical accuracy is not required, nor is the warrant to be construed with the same strictness as a power of attorney, or a penal statute,[42] or a special plea:[43] the law is satisfied if the propositions to be submitted are indicated with such reasonable certainty that no person interested can be misled.[44] Where the design is to raise money the subjects need not be set forth with greater particularity than is expressed in the statute which authorizes the town to vote money for the purposes named in the warrant.[45] If the application for a meeting contains precise and enumerated articles and the warrant is annexed thereto upon the same

[35] Reynolds v. Inhabitants, 6 Met. (Mass.) 340. And see s. c., p. 344.

[36] Allen v. City of Burlington, 45 Vt. 202.

[37] McVichie v. Town of Knight, 82 Wis. 137; s. c. 51 N. W. 1094.

[38] Wilson v. Waltersville School Dist., 44 Conn. 157, which, however, does not decide that it is indispensable.

[39] If this is omitted in the record of the warning, parol evidence is inadmissible to show that the original did in fact fix the hour, or that all the legal voters were present and voted: Sherwin v. Bugbee, 17 Vt. 337; s. c. 16 Vt. 439. See also, King v. Theodorick, 8 East 543; Moor v. Newfield, 4 Maine 44.

[40] Sherwin v. Bugbee, 16 Vt. 439. A warrant calling a meeting at a certain hall may imply that it is in the town and known to the voters: George v. Inhabitants &c., 6 Met. (Mass.) 497.

[41] The presence and consent of all the inhabitants at a meeting not legally warned is not a waiver of the defect: Moor v. Newfield, 4 Maine 44. See also, Ruhland v. Supervisors, 55 Wis. 664; s. c. 13 N. W. 877.

[42] Belfast &c. R. Co. v. Inhabitants &c., 60 Maine 568; Grover v. Inhabitants &c., 11 Allen (Mass.) 88; Kittredge v. Inhabitants &c., 138 Mass. 286.

[43] South School Dist. v. Blakeslee, 13 Conn. 227.

[44] Wyley v. Wilson, 44 Vt. 404; Ovitt v. Chase, 37 Vt. 196; Moore v. Beattie, 33 Vt. 219; Austin v. Inhabitants &c., 57 Maine 304; Alger v. Curry, 40 Vt. 437; Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865. "They are the language of plain men for practical purposes:" Per Redfield, J., in Hubbard v. Newton, 52 Vt. 346; Blush v. Town of Colchester, 39 Vt. 193. A statute requiring the subject-matter to be "distinctly stated" adds no force to the intent of a former statute providing that the "intent and design" should be specified: Child v. Colburn, 54 N. H. 71, 80. See also, cases cited in the two preceding notes; and for a more particular examination of the subject, § 383 et seq., post.

[45] Alger v. Curry, 40 Vt. 437. See also, Tucker v. Aiken, 7 N. H. 113.

paper calling a meeting to act on those articles, they are a part of the warrant as effectually as if they were embodied in it;[46] and a meeting is called for each and every article in the warrant, although one article requires a majority vote and another a two-thirds vote.[47] Where the action of a town was invalid because of want of power and also because there was no notice in the warning of the subject which was considered, an act of the legislature referring to such proceedings as "without authority of law," and confirming them, heals all the invalidities.[48]

§ **364. Service of warrant.**—The statutes generally require an attested copy of the warrant to be posted in two or more public places a certain time before the meeting.[49] The original may be posted, although the letter of the law specifies a copy, and the original to be returned with the officer's doing thereon.[50] The notice must be put up the required length of time,[51] but not necessarily in the usual place.[52] The words "public places," as used in statutes, are construed to mean such places as in comparison with others in the same town are those where the inhabitants and others most frequently meet or resort or have occasion to be, so that a notice there would for that reason be most likely to be seen. The character of the town and the situation and use of the place and the amount of resort to it, if disputed, are matters of fact for a jury; but if the facts are apparent it is a question of law what is a public place.[53] A

[46] George v. Inhabitants &c., 6 Met. (Mass.) 497.

[47] Inhabitants &c. v. Smith, 65 Maine 203.

[48] Baldwin v. Town of North Branford, 32 Conn. 47.

[49] It has been said that this duty is personal and can not be delegated; but the officer's return that he "caused" the notice to be posted implies that it was done under his own eye: Parker v. Titcomb, 82 Maine 180; s. c. 19 Atl. 162. Cf. Phillips v. Town of Albany, 28 Wis. 340, where the officer employed others to do the posting, and the court was loath to believe that an objection was seriously taken; "if it is, it is seriously overruled:" S. C., p. 356. Presumption in favor of regularity: State v. Supervisors &c., 23 Minn. 521. See also, Town of Lennington v. Blodgett, 37 Vt. 210.

[50] Brewster v. Hyde, 7 N. H. 206; Norris v. Eaton, 7 N. H. 284. See also, Eaton v. Miner, 5 N. H. 542; King v. Inhabitants &c., 6 T. R. 534; King v. Inhabitants &c., 1 East 13. Copies should include all the signatures to the original: Chapin v. School Dist., 30 N. H. 25.

[51] And the record may be amended to record the fact that it was not, and thus invalidate the action of the meeting: Blake v. Orford, 64 N. H. 299; s. c. 10 Atl. 117. There were no vested rights, "if in a case of this character the question is material," said the court.

[52] Stoddard v. Gilman, 22 Vt. 568.

[53] Proprietors &c. v. Chandler, 6 N. H. 271, 279; Gibson v. Bailey, 9 N. H. 168, 175, 178; Wells v. Burbank, 17 N. H. 393; Proprietors &c. v. Page, 6 N. H. 182, 190; Russell v. Dyer, 40 N. H. 173, 186, 187; s. c. 43

"conspicuous" place is not synonymous with "public"; both words are sometimes used in conjunction to insure the posting of notice in a public place in such a position that it may readily be seen.[54]

§ **365. Time of service.**—It was held in England that where notice was required "at least sixteen days before" a meeting, both the day of the notice and the day of the meeting were to be excluded in the computation;[55] but according to the uniform rule in this country wherever the question has arisen only one of these days is excluded;[56] it was so decided where the language was "at least twelve days before the time appointed;"[57] and where it was "at least five days inclusive before the meeting is to be held."[58] Where notice is published the date of a newspaper is presumed to be the date of its publication,[59] although it is printed and many copies sent out on the preceding day.[60] Statutory provisions relating to the period of notice of public meet-

N. H. 396, 397, 398; Wells v. Jackson &c. Co., 47 N. H. 235, 255; Cahoon v. Coe, 52 N. H. 518, 522; French v. Spalding, 61 N. H. 395, 401. A shoemaker's shop is not a public place: Tidd v. Smith, 3 N. H. 178. Prima facie a blacksmith shop is: Soper v. Inhabitants &c., 28 Maine 193. And an inn and a post-office: Hoitt v. Burnham, 61 N. H. 620. And houses of public worship: Scammon v. Scammon, 28 N. H. 419. But not the inside of the door if it is kept locked: Osgood v. Blake, 21 N. H. 550, 562. And a grist-mill: Fletcher v. Inhabitants &c., 20 Maine 439. A stage office may be: Baker v. Shephard, 24 N. H. 208, 212. And a schoolhouse; a building formerly used as a grain building; a large board fastened on the roadside wall: Seabury v. Howland, 15 R. I. 446; s. c. 8 Atl. 341. For other cases relating to designated or public places and depending upon special facts, see Chapin v. School Dist., 30 N. H. 25; Briggs v. Murdock, 13 Pick. (Mass.) 305; Soper v. Inhabitants &c., 28 Maine 193; State v. Beeman, 35 Maine 242. An allegation in a complaint that the notice was not posted in the most public place is a sufficient averment of fact, and not merely of a legal conclusion, to withstand a demurrer: McVichie v. Town of Knight, 82 Wis. 137; s. c. 51 N. W. 1094.

[54] A neglect to heed this distinction is fatal: Lewey's Island R. Co. v. Bolton, 48 Maine 451; Wardens &c. v. Woodward, 26 Maine 172.

[55] Reg. v. Justices &c., 8 Ad. & El. 173. See also, Reg. v. Lander, 1 Ir. R. C. L. 225.

[56] Mason v. School Dist., 20 Vt. 487; Hunt v. School Dist., 14 Vt. 300; Hubbard v. Town of Williamstown, 61 Wis. 397; s. c. 21 N. W. 295; Brooklyn Trust Co. v. Town of Hebron, 51 Conn. 22; citing Sheets v. Selden's Lessee, 2 Wall. 177; Bigelow v. Wilson, 1 Pick. (Mass.) 485; Bemis v. Leonard, 118 Mass. 502. See also, Osgood v. Blake, 21 N. H. 550, 562.

[57] Pratt v. Town of Swanton, 15 Vt. 147.

[58] Brooklyn Trust Co. v. Town of Hebron, 51 Conn. 22.

[59] Schoff v. Gould, 52 N. H. 512.

[60] "General publicity can not fairly be said to be given to anything contained in it till the day of its date and general circulation:" Queen v. Aberdare Canal Co., 14 Q. B. 854.

ings are mandatory, and a strict compliance therewith is an indispensable prerequisite to valid action,[61] but a defect in this particular may be cured by act of the legislature.[62]

§ 366. **Return of service.**—A return of service of a warning is necessary even if no statute requires it.[63] The return need not be dated,[64] nor is the date conclusive of the time of service.[65] If it is signed "B, Constable," without adding "of the town of," etc., it is sufficient.[66] In Maine, where the statute requires the return to state "the manner of notice and the time it was given," it must show specifically and precisely that the notice was served in exact conformity with the statute.[67]

[61] McVichie v. Town of Knight, 82 Wis. 137; s. c. 51 N. W. 1094; Greenbanks v. Boutwell, 43 Vt. 207; Stuart v. Town of Warren, 37 Conn. 225; and the preceding notes to this section. If the warning is not dated and is not required to be, the posted copy need not be dated, in which case parol evidence is admissible to show when it was put up: Braley v. Dickinson, 48 Vt. 599.

[62] Stuart v. Town of Warren, 37 Conn. 225. See also, Allen v. Archer, 49 Maine 346. But a statute validating the "doings" of certain cities, etc., in respect of bounties, contemplates only the doings of meetings legally held: Sanborn v. Machiasport, 53 Maine 82.

[63] "Such has been the invariable practice from time immemorial in towns and parishes in Massachusetts and in this state since its organization:" Tuttle v. Cary, 7 Maine 426, 430.

[64] Briggs v. Murdock, 13 Pick. (Mass.) 305.

[65] Williams v. Inhabitants &c., 21 Pick. (Mass.) 75; Inhabitants &c. v. Spofford, 12 Maine 487. "It is the common practice and sanctioned as legal" to date it on the day of the meeting: Ford v. Clough, 8 Maine 334; Tuttle v. Cary, 7 Maine 426, 430; Thayer v. Stearns, 1 Pick. (Mass.) 109.

[66] Commonwealth v. Shaw, 7 Met. (Mass.) 52.

[67] General statements in regard to time or place are insufficient: Wardens &c. v. Woodward, 26 Maine 172; Bearce v. Fossett, 34 Maine 575; Tuttle v. Cary, 7 Maine 426; Allen v. Archer, 49 Maine 346; Nelson v. Pierce, 6 N. H. 194; Gibson v. Bailey, 9 N. H. 168, 178; Proprietors &c. v. Page, 6 N. H. 182; Clark v. Wardwell, 55 Maine 61; Hamilton v. Inhabitants &c., 55 Maine 193; State v. Williams, 25 Maine 561, a thoroughly considered case. See also, Howland v. School Dist., 15 R. I. 184; s. c. 2 Atl. 549; 8 Atl. 337. It must state that the copies were "attested:" Fossett v. Bearce, 29 Maine 523. The court will not take judicial notice that the "Baptist," etc., meeting-houses or the "schoolhouse over the hill" are within the town: Brown v. Witham, 51 Maine 29. Cf. Marble v. McKenney, 60 Maine 332. The original is admissible if the statute does not require a record of it: Inhabitants &c. v. Spofford, 12 Maine 487. The rule is otherwise than as stated in the text where the statute does not prescribe the mode except that it shall be as the town may agree: Inhabitants &c. v. Spofford, 12 Maine 487; Ford v. Clough, 8 Maine 334. Notices presumed to be legally posted in case of ancient

§ 367. **Notice of annual meetings.**—Although the proceedings of special meetings are founded wholly upon a rigid compliance with the provisions of the statute relating to notice, it is held in some cases and intimated in others that these regulations are not mandatory in every particular when applied to annual meetings; indeed, it was declared in New York that no notice whatever is essential to the legality of an annual school-district meeting held at a time and place previously fixed according to law.[68] Somewhat more guarded expressions are used elsewhere. "The annual election of town officers," said Justice Gray, "or any other act which the statutes require to be done by the inhabitants at each annual meeting, might perhaps be sufficiently proved by what was done at the meeting without proving a special notice of it in the warning.[69] But with these exceptions such a notice is a necessary prerequisite to the validity of any act of the town either at annual meetings or at a special meeting."[70] And Judge Cooley says: "Where, however, both the time and place of an election are prescribed by law, every voter has a right to take notice of the law and to deposit his ballot at the time and place appointed,

meetings: School Dist. v. Bragdon, 23 N. H. 507, 514 (more than twenty years); Adams v. Stanyon, 24 N. H. 405; Willey v. Portsmouth, 35 N. H. 303, 309; Peterborough v. Lancaster, 14 N. H. 382 (thirty-eight years); and especially, Schoff v. Gould, 52 N. H. 512 (thirty years). And these defects are amenable according to the facts: Kellar v. Savage, 17 Maine 444; Harris v. School Dist., 28 N. H. 58; Clark v. Wardwell, 55 Maine 61. An omission to return may be supplied: Bean v. Thompson, 19 N. H. 290. The amendment can be made only by the officer: Fossett v. Bearce, 29 Maine 523. In Massachusetts the question was formerly one of doubt, the ground taken being that it required the formality of an officer's return in a civil suit: Perry v. Inhabitants &c., 12 Pick. (Mass.) 206; Thayer v. Stearns, 1 Pick. (Mass.) 109; Gilmore v. Holt, 4 Pick. (Mass.) 258. But under the latest exposition of the law a general return of service "according to law" is sufficient: Briggs v. Murdock, 13 Pick. (Mass.) 305; Houghton v. Davenport, 23 Pick. (Mass.) 235; Rand v. Wilder, 11 Cush. (Mass.) 294. See also, Commonwealth v. Shaw, 7 Met. (Mass.) 52; Sanborn v. School Dist., 12 Minn. 17; Doughty v. Hope, 3 Denio (N. Y.) 594; Detroit &c. R. Co. v. Bearss, 39 Ind. 598; Codman v. Winslow, 10 Mass. 146; State v. Donahay, 30 N. J. L. 404. Cf. Hardcastle v. State, 27 N. J. L. 551. The Massachusetts and Maine cases are reconciled in State v. Williams, 25 Maine 561, the distinctness of the Maine statute controlling the decisions in that state. Return can not be impeached by parol; if false, the officer may be indicted: Saxton v. Nimms, 14 Mass. 315.

[68] Obiter, Marchant v. Langworthy, 6 Hill (N. Y.) 646; s. c. affirmed, 3 Denio (N. Y.) 526.

[69] Citing Thayer v. Stearns, 1 Pick. (Mass.) 109; Gilmore v. Holt, 4 Pick. (Mass.) 258.

[70] Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865.

notwithstanding the official whose duty it is to give notice of the election has failed in that duty."[71]

§ 368. **The same subject continued.**—Where annual town meetings are empowered to raise money for the support of the poor, and for defraying all other proper charges and expenses of the town, and to direct the institution and defense of all actions in which the town is a party or interested, the meeting may vote to allow a certain sum in settlement of a claim for the support of a pauper without previous notice that such claim would be presented.[72] It was said in a Connecticut case that a vote at an annual town meeting appointing a superintendent of highways was void for the reason that there was nothing in the warning to notify the inhabitants that such an officer would be chosen.[73] A by-law of a corporation, fixing a time but not a place for an annual election, does not dispense with the public notice required by its charter or render that provision of the charter merely directory.[74]

§ 369. **Time of meeting.**—A town meeting should be held substantially at the hour specified in the warning.[75] It ought to be opened within a reasonable time after the hour appointed. What would be a reasonable time depends in some measure upon the circumstances. It is frequently the case that a meeting is named to be holden at nine o'clock in the forenoon and not opened until some hours afterward. If the delay is for the mere purpose of enabling

[71] Cooley Const. Lim. (6th ed.) 759; citing People v. Cowles, 13 N. Y. 350; People v. Brenahm, 3 Cal. 477; State v. Jones, 19 Ind. 356; People v. Hartwell, 12 Mich. 508; Dishon v. Smith, 10 Iowa 212; State v. Orvis, 20 Wis. 235; State v. Goetze, 22 Wis. 363; State v. Skirving, 19 Neb. 497; s. c. 27 N. W. 723. Contra, Foster v. Scarff, 15 Ohio St. 532. See also, Warner v. Mower, 11 Vt. 385, at p. 391. Of course, there can be no contention where the statute by fair implication dispenses with notice of annual meetings, and such is held to be the case if the statute requires notice only of special meetings: Schoff v. Town of Bloomfield, 8 Vt. 472.

[72] Tuttle v. Town of Weston, 59 Wis. 151; s. c. 17 N. W. 12.

[73] Per Andrews, C. J., in Pinney v. Brown, 60 Conn. 164; s. c. 22 Atl. 430. Note, however, that in Connecticut a superintendent of highways is an officer unknown to the statute. In Gordon v. Clifford, 28 N. H. 402, it was objected to the legality of the election of selectmen that the warning did not specify the purpose of the meeting, and the case sent up to the supreme court did not show affirmatively that the warrant was perfect, yet the court presumed that it was sufficient until the contrary should be shown.

[74] United States v. McKelden, MacArth. & M. 162.

[75] See Sherwin v. Bugbee, 16 Vt. 439.

the inhabitants to assemble, and without prejudice to any one, it would be outrageously unjust to hold the proceedings illegal. But, on the other hand, if it is such as to create a general belief that no meeting will be held, and thereby induce the great body of the inhabitants to disperse, and a few afterwards open the meeting and pass votes which could not have been passed except for the delay, it would be unjust to hold them legal and binding. The presumption is that a meeting was opened at a suitable and proper time in the day and in pursuance of the warning, and the burden of proving unreasonable delay is upon him who attacks the legality of the proceedings. It has been decided that a meeting opened one hour and five minutes after the hour fixed is not illegal as a matter of law, although only a few persons remained. The others might have gone away for the very purpose of preventing the meeting from acting.[76]

§ 370. **Place of meeting.**—We have seen that the warrant must point out the place of meeting, and it is undoubtedly essential to the validity of the proceedings that the inhabitants assemble at that place.[77] But in the absence of fraudulent intent the courts permit a reasonable adaptation to circumstances, and the doings of a gathering at another place are not always and as a matter of law illegal. Thus, a meeting was called at a school building in which it was usually held, and the clerk having lost the key stationed a boy at the door to direct persons to a hall where the proceedings were afterwards conducted in due form with an average attendance. An election at this meeting was held to be valid.[78] When, however, there is evidence of unfairness or oppression, the acts of parties who deviate a hair's breadth from the strictly legal course will be overthrown. When, for instance, the place appointed is a schoolhouse, it is taken to mean within its walls; and a few persons, including the town clerk, who meet in the highway in front of the building and formally adjourn to a distant part of the town, whereby other citizens are designedly prevented from participating in the transaction of important business, will have only their trouble for their pains. Such conduct would not be tolerated even if the first meeting were legally held.[79]

§ 371. **Organization of meeting—The moderator.**—The business of a meeting can not be conducted without a presiding officer, or

[76] South School Dist. v. Blakeslee, 13 Conn. 227.

[77] Chamberlain v. Inhabitants &c., 13 Maine 466; Wakefield v. Patterson, 25 Kan. 709.

[78] Wakefield v. Patterson, 25 Kan. 709.

[79] Chamberlain v. Dover, 13 Maine 466. See also, § 375, post.

"moderator," according to the terminology of New England town meetings.[80] It is usually made the duty of the town clerk, by statute, to preside until a moderator is chosen; and it has been said that his duty to do so is an incident to his office, without any positive requirement.[81] It is not necessary that a moderator be elected by ballot or be sworn unless the statute prescribes it.[82] And where he neglects to take an oath as provided by statute, "whether the doings of towns can, in any case, be held void on that account, and if in any in what cases, may be questions of no little difficulty," to quote from the opinion of the court in an early New Hampshire case. It was there held, at any rate, that a tax collector chosen at such a meeting was a good de facto officer.[83] And, likewise, the acts of a moderator appointed in violation of a statute requiring a check-list, were sustained on the principle which upholds the acts of de facto officers.[84] And where a moderator elected at an annual town meeting was called without another election to preside at a meeting held during the year, and there was no objection on the part of any one, a voter who was present was estopped from contesting the validity of the proceedings of the meeting.[85]

§ 372. The same subject continued—Clerk and clerk pro tempore.—The town clerk is the proper officer to record the doings of a meeting; but the fact that the statute provides for the appointment of a clerk when there is a vacancy does not preclude the meeting from appointing a clerk pro tempore in the absence of the regular clerk;[86] and an appointment by the moderator acquiesced in by the meeting will be an appointment by the meeting.[87] Where the selectmen without authority appointed a clerk pro tempore, who thereupon acted as

[80] Attorney-General v. Crocker, 138 Mass. 214. As to the power to adjourn before appointing a moderator, see § 374, post.

[81] Dodds v. Henry, 9 Mass. 262, holding that he is the proper person to receive and count the votes given for moderator.

[82] Mitchell v. Brown, 18 N. H. 315.

[83] Tucker v. Aiken, 7 N. H. 113, 140.

[84] Attorney-General v. Crocker, 138 Mass. 214. See also, Commonwealth v. Shaw, 7 Met. (Mass.) 52, 56.

[85] State v. Town of Vershire, 52 Vt. 41. Cf. State v. Harris, 52 Vt. 216. These cases and the cases cited in the preceding note seem to dispose of the difficulty suggested in Tucker v. Aiken, 7 N. H. 113, 140, quoted in the text. As to the effect of a protest if it were made when the moderator first assumed to act, quære: Attorney-General v. Crocker, 138 Mass. 214, 219.

[86] Hutchinson v. Pratt, 11 Vt. 402; citing Hawkins P. C. 18, § 3. See also, Hickok v. Town of Shelburne, 41 Vt. 409. There can not be a record without a clerk: Attorney-General v. Crocker, 138 Mass. 214.

[87] State v. McKee, 20 Or. 120; s. c. 25 Pac. 292; State v. Smith (Or.), 25 Pac. 389.

such with the acquiescence of the meeting, his record of the proceedings was valid as the act of an officer de facto.[88] At a meeting of a school society a clerk pro tempore was appointed in the absence of the regular clerk, but he did not take the oath of office provided by law until some months afterward, nor make any record of the business of the meeting before that time, and then only from memoranda and recollection. The record was held to be perfect. The court said: "It is sufficient if the oath be administered before the official acts required of the clerk are performed, so that those acts are done under its influence and sanction. Many acts of public meetings must of necessity transpire before the clerk be sworn; such as the choice of a presiding officer and the appointment of clerks themselves. It is not necessary that a clerk be a witness of the proceedings of a meeting under his official oath; it is sufficient if he record them or sanction the record of them after he has been sworn."[89]

§ 373. **Adjournments of meetings.**—When a meeting is fairly organized it can not be doubted that it possesses the incidental power of adjournment to another time and place, unless it is prohibited by statute.[90] Where the voters and officers by unanimous consent, but

[88] Attorney-General v. Crocker, 138 Mass. 214. It was held that a protest made by a voter, after the election of town officers at a meeting where such a clerk acted, "as to the legality of their election," did not show that he was not reputed to be town clerk. The court refrained from deciding what the effect would have been if a protest had been distinctly and seasonably made: S. C., p. 219.

[89] Bartlett v. Kinsley, 15 Conn. 327. A statute requiring a record to be made of the persons sworn into office is directory, and it does not prevent the fact from being otherwise proved when there is no such record. So held where the record of a town meeting was certified by a clerk pro tem. whose oath of office was not on record: Kellar v. Savage, 17 Maine 444.

[90] "Nor is it necessary that the record should state any reason for the adjournment. The voters are the sole judges of that:" Hathaway v. Inhabitants &c., 48 Maine 440, at p. 444. It is a measure which can be taken only at a regular meeting held at the place appointed in the warning: Chamberlain v. Inhabitants &c., 13 Maine 466. A statute providing that a town meeting shall be held open only between sunrise and sunset does not require it to be kept open from the rising until the setting of the sun. It may adjourn from forenoon to afternoon: People v. Martin, 1 Seld. (N. Y.) 22, holding, further, that although the statute prescribes the place of meeting it is competent for a meeting first convened there to adjourn to another place; citing Goodel v. Baker, 8 Cowen (N. Y.) 286. Reasonable presumptions will be made in favor of regularity and good faith: Converse v. Porter, 45 N. H. 385. See also, McDaniels v. Flower Brook &c. Co., 22 Vt. 274. Adjournment to a particular day can not be proved by parol; it must appear of record: Taylor v. Henry, 2 Pick. (Mass.)

without any formal adjournment or vote, go out into the open air in front of the place of meeting for greater convenience, and there vote without objection on the part of any person, and no one is prejudiced in any way, the action is legal.[91] A town meeting called to vote aid to a railroad under a statute which requires a two-thirds vote may adjourn by a majority vote.[92]

§ 374. **The same subject continued.**—Where the town clerk presides at the opening of a meeting, though it is not competent for the meeting to transact business until the appointment of a moderator, it may nevertheless adjourn; and so, a fortiori, where a moderator presides who is illegally chosen.[93] If a meeting legally held is adjourned to another day without specifying the hour, the proceedings of the adjourned meeting are invalid. "Theoretically, it might be well enough to establish it as a general rule that when a meeting called at or adjourned to a particular hour votes an adjournment without naming any hour, it shall be taken to be the same hour as that fixed in the warning or in the last vote for adjournment in which the hour is named. We are inclined, on the whole, however, to think that the reasons arising from a consideration of the practical consequences likely to flow from the one rule and the other weigh most strongly in favor of putting the vote of adjournment upon the same ground and under the same rule as has already been established in the case referred to above[94] as to the omission in the warning to name any hour for the meeting."[95] But where at a March meeting it was "voted that this meeting stand adjourned to the April meeting," and it was shown to have been the uniform custom for fifty years to hold

397. See also, Andrews v. Inhabitants &c., 110 Mass. 214. And where the record shows an adjournment to another place and proceedings there had it can not be contradicted by parol evidence of an adjournment without day: Hunneman v. Fire District, 37 Vt. 40. "Recess" and "adjournment" are synonymous: People v. Martin, 1 Seld. (N. Y.) 24, 27; Ex parte Mirande, 73 Cal. 365; s. c. 14 Pac. 888.

[91] Brown v. Inhabitants &c., 79 Maine 305; s. c. 9 Atl. 844; citing Dale v. Irwin, 78 Ill. 170; People v. Kniffin, 21 How. Pr. (N. Y.) 42. A record stating that the meeting "was then adjourned to," etc., without stating that any vote was taken, sufficiently shows that it was the act of the meeting: Hathaway v. Inhabitants &c., 48 Maine 440, at p. 444.

[92] Inhabitants &c. v. Smith, 65 Maine 203.

[93] Attorney-General v. Simonds, 111 Mass. 256.

[94] Sherwin v. Bugbee, 17 Vt. 337; s. c. 16 Vt. 439.

[95] Greenbanks v. Boutwell, 43 Vt. 207. If the record of an adjournment omits the hour, a town clerk chosen at the adjourned meeting can not amend it: Taylor v. Henry, 2 Pick. (Mass.) 397, 402.

a meeting on the first Monday of April, it was decided that the regular April meeting called by an independent warrant was also a legal adjourned meeting.[96]

§ 375. **The power of adjournment limited.**—A limit to the power of the majority to adjourn a meeting is well illustrated in a Vermont case, where the charter made it imperative on a village at every annual meeting to elect its officers; and the court held that the majority of the meeting could not adjourn the same without day in fraud of the law and the minority; and that if a legal minority immediately following such a fraudulent adjournment reorganizes the meeting and elects officers they will be entitled to hold their offices. "This corporation is governmental in its functions," said the court, "and invested with certain powers, rights and privileges that it may perform the duties cast upon it, and it can not by refusing to perform those duties be permitted to defeat the provisions and purposes of the law of its creation. At a meeting duly constituted and organized a majority of the voters present, in the absence of any statute or other restraining authority to the contrary, have an implied right to adjourn the meeting to another time and place. But even this we apprehend must be fairly done and for no improper purpose. In People v. Martin,[96a] Paige, J., says: 'I think that the power of adjourning a town meeting to another time and place may under peculiar circumstances be oppressively exercised and lead to a defeat of the public will. This power ought not to be exercised except in a case of extreme necessity.' Chancellor Kent, in speaking of cases where the members of a corporation are directed to be but are not annually elected, says that the omission to elect does not take away the power incident to the corporation to elect afterwards, when the annual day has passed, by some means free from design or fraud. Now, in the case at bar it was by design that the last annual meeting was adjourned without day, and such adjournment was a fraud both upon the law and upon the minority who were in favor of abiding by the law."[97]

§ 376. **Adjourned meetings.**—It is too well settled to require comment that all corporations, whether municipal or private, may tran-

[96] Reed v. Inhabitants &c., 117 Mass. 384.

[96a] 5 N. Y. 24, 27.

[97] Stone v. Small, 54 Vt. 498. Rowells, J., concludes his opinion on this point by quoting from Kimball v. Marshall, 44 N. H. 465 (see § 283, ante), where Bell, C. J., said in a similar case:—"The majority could make no legal adjournment to such a time as would defeat the performance of the prescribed duty, and the minority might keep the meeting in existence till the duty was done." See also, People v. Martin, 5 N. Y. 24, 27; Chamberlain v. Inhabitants &c., 13 Maine 466.

act any business at an adjourned meeting which they could have done at the original meeting; it is but a continuation of the same meeting; whether the meeting is continued without interruption for many days, or by adjournment from day to day or from time to time, many days intervening, it is evident it must be considered the same meeting without any loss or diminution of powers.[98] If a moderator is chosen at the original meeting in violation of a statute requiring a check-list, all that is done while he presides is of no binding force; and if town officers are elected at that meeting, the town may, at an adjourned meeting, elect a moderator regularly, and different town officers, who will be entitled to their offices as against those claiming under the first election.[99] On the other hand, an adjourned meeting has no more authority than the original meeting; if the latter be void for want of legal notice, or otherwise, no capacity can be acquired by adjournment;[100] in other words, there can be no increase of momentum without the application of new force.

§ 377. **Reconsideration and rescission—The general rule.**—The general rule is settled beyond dispute that action taken by a town meeting may be reconsidered and rescinded at the same meeting, or at any adjourned or any other subsequent meeting.[101] And a vote

[98] Warner v. Mower, 11 Vt. 385, 391; Inhabitants &c. v. Smith, 65 Maine 203. "A regular and proper adjournment of a town is a continuation of the same meeting:" Attorney-General v. Simonds, 111 Mass. 256. An adjourned meeting of a special meeting may transact business under the original call: Hickok v. Town of Shelburne, 41 Vt. 409. See also, Reed v. Inhabitants &c., 117 Mass. 384, 331; Withington v. Inhabitants &c., 8 Cush. (Mass.) 66; Hunneman v. Inhabitants &c., 10 Met. (Mass.) 454. The record of a vote stating that it was passed "at a meeting," etc., "legally holden by adjournment," is sufficient prima facie evidence that it was a legal meeting: Brownell v. Palmer, 22 Conn. 107. See, however, Taylor v. Henry, 2 Pick. (Mass.) 397, where a record of doings "at an adjourned meeting," without showing of what meeting it was an adjournment, was held insufficient. But in that case the record of the original meeting did not show an adjournment which was, in fact, taken.

[99] Attorney-General v. Simonds, 111 Mass. 256.

[100] United States v. McKelden, MacArth. & M. 162; Sherwin v. Bugbee, 16 Vt. 439; s. c. 17 Vt. 337.

[101] Marsh v. Inhabitants &c., 153 Mass. 34; s. c. 26 N. E. 412; Parker v. Titcomb, 82 Maine 180; s. c. 19 Atl. 162; Hunneman v. Inhabitants &c., 10 Met. (Mass.) 454, 456; Belfast &c. R. Co. v. Inhabitants &c., 62 Maine 148; Mitchell v. Brown, 18 N. H. 315; Getchell v. Inhabitants &c., 55 Maine 433; George v. Inhabitants &c., 6 Met. (Mass.) 497; Eddy v. Wilson, 43 Vt. 362; Stackhouse v. Clark, 52 N. J. L. 291; s. c. 19 Atl. 462; Withington v. Inhabitants &c., 8 Cush. (Mass.) 66. Of course, such action, to be effective, must be within the scope of the warning. See

not to reconsider a previous vote taken at the same meeting does not abridge the power of future meetings over that vote.[102] Where there is a vote in the negative the voters may nevertheless at the same or any other meeting rescind the vote and pass measures in the affirmative;[103] or they may take inconsistent action without formally rescinding the vote:[104] if the votes are repugnant the former is rescinded by implication.[105] Where the law requires the assent of a town to be indicated by a two-thirds vote, a proposal passed by the requisite number may be reconsidered by a bare majority of the voters before it has become binding by the acceptance of the party to whom it is made.[106] When a motion to reconsider a vote is adopted the vote ceases to have any effect, just as if it had never been passed.[107]

§ 378. The same subject considered—Illustrations.—A town authorized by the legislature to subscribe to the capital stock of a railroad and voting to do so at a lawful meeting may at a subsequent meeting rescind the vote if the rights of third parties have not intervened and nothing has been done under the original vote.[108] So, also, where the voters at any legally called meeting were authorized to appropriate a certain sum for building a schoolhouse, which they accordingly did, but at a subsequent meeting the resolution was rescinded, it was held that they might, at a still later meeting, make the appropriation.[109] After a vote to levy a tax has been reconsidered the collector can not lawfully proceed to collect it.[110] A town voted to let an inhabitant, who sent his children to school in another town, "draw his proportion of school money," and reconsidered this vote before the money was paid. It was held that assumpsit could not be

§ 383 et seq., post, and also § 307 et seq., ante, relating to reconsideration and rescission by public boards.

[102] Hunneman v. Inhabitants &c., 10 Met. (Mass.) 454, 457.

[103] Stackhouse v. Clark, 52 N. J. L. 291; s. c. 19 Atl. 462.

[104] Eddy v. Wilson, 43 Vt. 362.

[105] George v. Inhabitants &c., 6 Met. (Mass.) 497.

[106] Perhaps even a minority consisting of more than one-third might do so: Belfast &c. R. Co. v. Inhabitants &c., 62 Maine 148. Where a vote to issue bonds to a railroad was passed by the necessary two-thirds, with a condition annexed to it, a subsequent meeting could not, by a mere majority, vote to waive the condition: Portland &c. R. Co. v. Inhabitants &c., 58 Maine 23.

[107] Withington v. Inhabitants &c., 8 Cush. (Mass.) 66; Stoddard v. Gilman, 22 Vt. 568.

[108] "If, therefore, the town when clothed with an optional power may rescind action once taken in its customary municipal affairs, no reason can be assigned why it may not, under like circumstances, do the same under a grant of power unusual in its municipal affairs:" Estey v. Starr, 56 Vt. 690, 693.

[109] Sanford v. Prentice, 28 Wis. 358.

[110] Stoddard v. Gilman, 22 Vt. 568.

maintained against the town for the amount of taxes assessed upon and paid by him for the support of schools.[111] Under authority to divide, unite and alter school districts from time to time, when deemed necessary, a town at an annual meeting set one district over to another. It was competent at a subsequent meeting to rescind the vote and reinstate the district.[112]

§ 379. **The same subject continued—The rule qualified.**—The power to reconsider and rescind is subject to several just and necessary qualifications. If a vote of the town has given a cause of action against it, no subsequent proceedings can impair or destroy this vested right.[113] Thus, the appointment of a committee to make a contract on behalf of the town can not be reconsidered and the authority of the committee withdrawn so as to avoid an intervening contract.[114] A resolution which constitutes an acknowledgment so as to take a debt out of the statute of limitations can not be taken back and the claim brought within the bar of the statute.[115] And, generally, rights of third parties resting on a vote can not be divested by rescission.[116] Again, if a vote has accomplished its purpose and worked out the intended result, its force is spent, and an attempt to reconsider it is futile. For instance, a statute required each town at its annual meeting to vote on the question of abolishing the school district system and adopting the town system, and that the result of the vote should be certified to the secretary of state. At a town meeting the first vote was a tie, and another was taken at the same meeting resulting in the abolition of the district system. It was held that the vote first taken was final and conclusive, and exhausted the authority of the town in the premises, and that an election of officers of the town system was illegal.[117]

[111] Withington v. Inhabitants &c., 8 Cush. (Mass.) 66.

[112] Bill v. Dow, 56 Vt. 562.

[113] Hall v. Inhabitants &c., 116 Mass. 172; Nelson v. Inhabitants &c., 7 Pick. (Mass.) 18. A vote ratifying the doings of selectmen in borrowing money and giving a note therefor in behalf of the town can not be rescinded at a subsequent meeting: Brown v. Inhabitants &c., 79 Maine 305; s. c. 9 Atl. 844.

[114] Not even at an adjourned meeting. "To have been affected by the adjournment the subject should have been suspended or the committee directed not to proceed till the meeting was dissolved:" Hunneman v. Inhabitants &c., 10 Met. (Mass.) 454, 456. Cf. Damon v. Inhabitants &c., 2 Pick. (Mass.) 345.

[115] Sanborn v. School Dist., 12 Minn. 17.

[116] Where an unauthorized payment by a town treasurer was ratified it could not be rescinded and the amount recovered from him: Inhabitants &c. v. Peirce, 122 Mass. 270.

[117] State v. Adams, 58 Vt. 694; s. c. 4 Atl. 228. See also, Parker v. Titcomb, 82 Maine 180; s. c. 19 Atl. 162.

§ 380. Ratification of doings of invalid meetings.—Where the doings of a town meeting are invalid by reason of a defective warning, or are lacking in some technical requisite, a subsequent meeting may supersede the vitiating effect of such irregularities by ratification.[118] A vote at an illegal meeting which has been spread upon the records may be expressly referred to in such a way as to become part of a vote at a subsequent valid meeting.[119] But the courts are altogether averse to an implied ratification; and a resolution adopting previous defective proceedings will have effect only to the precise extent indicated by its terms.[120] Thus, a vote to reconsider certain votes passed at a former meeting does not recognize the validity of other acts of the same meeting;[121] and a vote not to rescind certain

A school district voted to raise money, and it became the duty of the clerk to certify the vote to the selectmen, who were thereby required to assess a tax for the amount. At a subsequent meeting the selectmen not having assessed the tax a motion was made to reconsider, which the moderator refused to put to vote. At a later meeting it was voted to reconsider, but in the meanwhile the tax had been assessed. Held, that the action of the moderator was unwarrantable, but it did not operate to reverse or impair the vote to raise the money; and the vote to reconsider was of no effect, because the assessment had intervened: Mitchell v. Brown, 18 N. H. 315.

[118] But this can not be proved by parol: Jordan v. School Dist., 38 Maine 164; and the meeting must be duly warned. "The vote of those who attend a town meeting being of no validity against the town or its inhabitants unless the object of the vote is set forth in the notice or warning of the meeting, the town can no more ratify an act afterwards than authorize it beforehand, except by a vote passed pursuant to a previous notice specifying the object. Without the indispensable prerequisite of such a notice those present at a meeting have no greater power to bind the town indirectly by ratification or estoppel than they have to bind it directly by an original vote:" Per Justice Gray, in Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865. This is the same principle that controls in the well-settled doctrine that acts absolutely ultra vires can not be ratified. See chapter on Liability of the Corporation for Acts of its Officers and Agents. Ex nihilo nihil fieri potest.

[119] Inhabitants &c. v. Smith, 65 Maine 203, at p. 207.

[120] Hamilton v. Inhabitants &c., 55 Maine 193. In Southard v. Inhabitants &c., 53 Maine 389, 391, the court said:—"We can not presume the town intended to ratify the proceedings of a meeting not legally called. If such was the intention of the town, it should have used language so clear and explicit that there could be no doubt of its purpose."

[121] "It should have been one of the articles in the warrant to see whether the town would ratify those doings and an affirmative vote had thereon before they could be confirmed so as to be binding on the town:" Chamberlain v. Inhabitants &c., 13 Maine 466, 474.

doings does not give them any efficacy.[122] Where a town voted, at a meeting not legally held, to accept the provisions of an act abolishing school districts, and afterwards, at a meeting called under an article "to see if the town will reconsider their action" relating to school districts under the act, specifying it, "and return to the old school-district system," it was voted that this article be indefinitely postponed, it did not legalize the action of the previous meeting.[123]

§ 381. **Parliamentary law in town meetings.**—"With the exception of the election of those officers which the statute prescribes shall be elected by ballot, all or nearly all of the functions of a town meeting are such as pertain to a deliberative body or assembly. The subjects upon which a town meeting may take action are numerous and diversified. The course of procedure which is to be pursued is not fully marked out by statute, and I deem it only safe to say that when the statute does not give direction the general rules of parliamentary law, so far as they may be applicable, should be observed and enforced in conducting the business of a town meeting. It will necessarily follow that propositions upon which the town meeting may lawfully act may be submitted to it by motion or resolution or in the form of proposed by-laws or orders by any elector of the town for the consideration of the meeting. It also follows from such application of the rules of parliamentary law that the chairman of the meeting can not prevent action upon any subject within the power conferred upon the meeting by neglecting or refusing to present the same to the meeting for its action."[124] It has also been said, however, that "the technical rules of a legislative body, framed for its own convenient action and government, are not of binding force on towns unless such rules have been so acted upon and enforced by the town in their regular meetings as to create a law for themselves and binding on the inhabitants."[125]

§ 382. **The same subject continued—Illustrations.**—A school-district meeting voted to dismiss an article in the warrant and after-

[122] "The immunity of the district was perfect; no subsequent inaction could affect it; it could be taken from it only by positive vote upon clear notice that it would pay:" Wright v. North School Dist., 53 Conn. 576. See also, Brooklyn Trust Co. v. Town of Hebron, 51 Conn. 22, a strong case.

[123] Child v. Colburn, 54 N. H. 71. See also, Rollins v. Town of Chester, 46 N. H. 411; and, for a relaxation of the rule where the town has acquired property in pursuance of defective votes, Greenbanks v. Boutwell, 43 Vt. 207.

[124] Per Lyon, J., in State v. Davidson, 32 Wis. 114.

[125] Hunneman v. Inhabitants &c., 10 Met. (Mass.) 454, 457—not a very perspicuous statement. See also, § 306, ante.

ward passed a vote which was not germane to any article except the one dismissed. For that and another reason the court held the vote to be invalid.[126] A motion was put to vote and rejected. Afterwards an amendment was passed, but the original resolution was not again submitted to the meeting. It was adjudged that it could not be amended without a reconsideration and therefore there was no vote.[127] Although in strict parliamentary law the acceptance of the report of a committee will not be an affirmance by the constituent body of the matters contained in it, yet when a matter is referred to a recognized permanent department of a municipal corporation, like selectmen, with authority to take or propose some definite action on the subject, and they make a report accordingly without suggesting any separate vote or resolution for more effectually carrying the measure into effect, a vote accepting the report has been deemed of itself an adaptation and execution of the measure proposed.[128] Where there was a spontaneous adjournment of a meeting to the open air, without a vote, the court in approving the proceeding invoked the maxim of parliamentary law that anything as to the mode of action may be done by unanimous consent.[129]

§ 383. **Validity of votes as determined by the warrant— Illustrations.**—The measure of exactness which the law requires in specifying the subject-matter in a warrant has already been discussed in general terms, and is now reverted to for the purpose of showing a few illustrations of the well-recognized rules. A liberal construction has always been given to the language of warrants so as to include all that is properly, even if incidentally, embraced in the subject to which they relate, and the articles they contain are mere abstracts or heads of the propositions to be laid before the inhabitants.[130] The question of granting money need not be distinctly set forth if the subject-matter to be acted on be one which is likely to require an appropriation.[131] Thus, a tax may be voted under an article "to see what

[126] On this point the court remarked that "no attempt appears to have been made to reconsider the vote dismissing the . . . article:" Holbrook v. Faulkner, 55 N. H. 311. Cf. Eddy v. Wilson, 43 Vt. 362, and George v. Inhabitants &c., 6 Met. (Mass.) 497, cited in § 377, ante.

[127] Stuart v. Town of Warren, 37 Conn. 225.

[128] Niles v. Patch, 13 Gray (Mass.) 254, 261. See also, Hark v. Gladwell, 49 Wis. 172; s. c. 5 N. W. 323.

[129] Brown v. Winterport, 79 Maine 305, 311; s. c. 9 Atl. 844.

[130] Commonwealth v. Wentworth, 145 Mass. 50, 52; s. c. 12 N. E. 845. "These municipal divisions of the state [school districts] are created to work out beneficial results to the people in education and other vital matters to the well-being of the state, and their acts should not be too sharply criticized:" Hubbard v. Newton, 52 Vt. 346.

[131] Blackburn v. Inhabitants &c., 9 Pick. (Mass.) 97.

method the district will take to pay the expense" of the school;[132] and an article "to see what measures the town will take to build" a bridge, "or any matters and things relating thereto," will authorize the raising of money for that purpose.[133] A tax may be laid under a warrant "to take into consideration the expediency of raising money for the use of schools;"[134] and a warrant "to see if the town would make an appropriation towards purchasing a fire-engine" is sufficient authority for a vote "to raise and appropriate" a sum for that purpose.[135] Under a warrant to raise money by a tax the town may instruct the collector to pay it to the selectmen, although it is the usual course to pay it to the town treasurer.[136]

§ 384. **The same subject continued.**—A public act authorizing town aid to railroads need not be noticed in the warrant to see if the town will vote such aid.[137] So, also, "to see if the town will vote to subscribe for and hold shares in the capital stock of" the road; "to see if the town will vote to become an associate for the formation of the" road; and "to see what action the town will take in regard to raising money to aid in building" the road,—will support a vote authorizing a committee to borrow money and gives notes and bonds therefor.[138] On the other hand, if a public act conferring authority is referred to by title, page and chapter, its provisions need not be recited.[139] And a subscription for stock is within the scope of the warrant "to see if the town will loan its credit to aid in the construction of the railroad."[140] An agent to build a road may be appointed under a warrant "to choose all necessary town officers."[141] Where a warrant was to see if the town would raise money to pay the bounty "promised" to soldiers, a vote to pay the bounty "offered" to soldiers followed the warning.[142] A town may vote to unite two existing districts under an article of the warrant "to see if the town will alter the boundaries of any of the school districts."[143] In a warning

[132] Chandler v. Bradish, 23 Vt. 416.

[133] Ford v. Clough, 8 Maine 334.

[134] Bartlett v. Kinsley, 15 Conn. 327.

[135] But if the warrant had been to see if the town would appropriate to a specific object money already in the treasury, it seems the town could not have laid a tax for that purpose: Torrey v. Inhabitants &c., 21 Pick. (Mass.) 64.

[136] Alger v. Curry, 40 Vt. 437.

[137] Inhabitants &c. v. Smith, 65 Maine 203.

[138] Kittredge v. Inhabitants &c., 138 Mass. 286.

[139] Child v. Colburn, 54 N. H. 71. See also, Birge v. Berlin Iron Bridge Co., 16 N. Y. S. 596; s. c. 62 Hun (N. Y.) 618 (mem.).

[140] Belfast &c. R. Co. v. Inhabitants &c., 60 Maine 568.

[141] He is not strictly a town officer: Baker v. Shepard, 24 N. H. 208.

[142] Blodgett v. Holbrook, 39 Vt. 336.

[143] Converse v. Porter, 45 N. H. 385.

to act upon the acceptance of a town way a general description of the way is sufficient.[144] A vote to purchase land for a schoolhouse is sustained by an article of the warrant "to see what measures the district will take in relation to building a schoolhouse."[145] Many other cases where votes have been tested by the warrant and declared valid are cited in the note.[146]

§ 385. **Invalidity of votes—Illustrations.**—The subject-matter being plainly referred to may properly include authority to act upon minute specifications and particulars included and necessarily involved in it, which need not be in particular terms enumerated.[147] But when the main proposition is narrow and restrictive it can not be extended. Thus, where a town meeting voted to dispense with an article in the warrant providing for bounties to men who were drafted between certain dates, and voted a bounty to all, it was held that a subsequent meeting, called to see if the town would ratify "the vote or article" of the previous meeting to pay a bounty to those described in the rejected article, could not legally appropriate money for any

[144] State v. Beeman, 35 Maine 242.

[145] Dix v. School Dist., 22 Vt. 309.

[146] Brown v. Inhabitants &c, 79 Maine 305; s. c. 9 Atl. 844; Davenport v. Inhabitants &c., 10 Maine 317; Drisko v. Inhabitants &c., 75 Maine 73; Sawyer v. Manchester &c. R. Co., 62 N. H. 135; Tucker v. Aiken, 7 N. H. 113; Moore v. Beattie, 33 Vt. 219; Hubbard v. Newton, 52 Vt. 346; Weeks v. Batchelder, 41 Vt. 317; Ovitt v. Chase, 37 Vt. 196; Hickok v. Town of Shelburne, 41 Vt. 409; Kittredge v. Town of Walden, 40 Vt. 211; Hunneman v. Fire Dist., 37 Vt. 40; Hall v. School Dist., 46 Vt. 19; Commonwealth v. Wentworth, 145 Mass. 50, 52; s. c. 12 N. E. 845; Matthews v. Inhabitants &c., 131 Mass. 521; s. c. 134 Mass. 555; Inhabitants &c. v. Searle, 127 Mass. 502; Reed v. Inhabitants &c., 117 Mass. 384; Whitney v. Inhabitants &c., 111 Mass. 368; Sherman v. Torrey, 99 Mass. 472; Grover v. Inhabitants &c., 11 Allen (Mass.) 88; Rideout v. Inhabitants &c., 1 Allen (Mass.) 232; Fuller v. Inhabitants &c., 11 Gray (Mass.) 340; Hadsell v. Inhabitants &c., 3 Gray (Mass.) 526; Avery v. Stewart, 1 Cush. (Mass.) 496; Kingsbury v. School Dist., 12 Met. (Mass.) 99; Haven v. City of Lowell, 5 Met. (Mass.) 35; Williams v. Inhabitants &c., 21 Pick. (Mass.) 75; Blackburn v. Inhabitants &c., 9 Pick. (Mass.) 97; Seabury v. Howland, 15 R. I. 446; s. c. 8 Atl. 341; South School Dist. v. Blakeslee, 13 Conn. 227; People v. Board of Education, 1 N. Y. S. 593; s. c. 48 Hun (N. Y.) 618; State v. Trustees &c., 52 N. J. L. 104; s. c. 18 Atl. 683; Briggs v. Borden, 71 Mich. 87; s. c. 38 N. W. 712; Mason v. Kennedy, 89 Mo. 23; s. c. 14 S. W. 514; Williamstown &c. School Dist. v. Webb, 89 Ky. 264; s. c. 12 S. W. 298; Reynolds Land &c Co. v. McCabe, 72 Tex. 57; s. c. 12 S. W. 165; People v. Sisson, 98 Ill. 335.

[147] Pittsburg v. Danforth, 56 N. H. 272. If the warning has been recorded a copy of the record is the usual evidence; the original need not be produced: Commonwealth v. Shaw, 7 Met. (Mass.) 52.

except those persons who came within the description in the rejected article.[148] The method as well as the object of raising money is a matter of substantial interest to the taxpayers, and a vote to borrow money can not be founded on a proposition to levy a tax.[149] Sweeping clauses, such as "to do other town business," are entirely nugatory and do not extend the scope of the specifications preceding them.[150]

§ 386. **The same subject continued.**—A meeting warned to consider "the question of raising money," etc., "for school purposes for the ensuing year," can not vote money for the purpose of building a high-school building.[151] An article "to see if said town will accept and adopt the report of the committee to alter school districts" authorizes such alterations as the committee recommend and no others.[152] It seems that a meeting called "to take action with regard to rescinding the doings" of a former illegal meeting can not vote to ratify.[153] An article in the warrant "to see if the town will vote to pay the same bounty to those who may enlist," etc., "as is now paid to those who enlisted," etc., does not authorize a vote to pay a larger bounty.[154] A school-district meeting was called "for the purpose of obtaining information with regard to the recent assessments upon the property of the district." At the meeting a vote was passed appointing a committee to make the investigation, with power to employ counsel. It was held that the district was not liable for the services of counsel who instituted legal proceedings.[155] Other cases where the doings of meetings have been pronounced to be extraneous to the purposes specified in the warrant, and therefore invalid, are cited in the note.[156]

[148] Pittsburg v. Danforth, 56 N. H. 272.

[149] Blush v. Town of Colchester, 39 Vt. 193; Atwood v. Town of Lincoln, 44 Vt. 332.

[150] Hayden v. Noyes, 5 Conn. 391; Baldwin v. Town of North Branford, 32 Conn. 47; Hunt v. School Dist., 14 Vt. 300; Child v. Colburn, 54 N. H. 71. Although a meeting be duly warned for some purposes, if a vote is had upon some subject not specified in the warning, as to that vote the meeting is void: Pinney v. Brown, 60 Conn. 164; s. c. 22 Atl. 430.

[151] Allen v. City of Burlington, 45 Vt. 202.

[152] Wyley v. Wilson, 44 Vt. 404.

[153] Wright v. North School Dist., 53 Conn. 576; s. c. 5 Atl. 708.

[154] Austin v. Inhabitants &c., 57 Maine 304.

[155] Wright v. North School Dist., 53 Conn. 576; s. c. 5 Atl. 708.

[156] Inhabitants &c. v. Pease, 19 Maine 184; Allen v. City of Burlington, 45 Vt. 202; Rollins v. Town of Chester, 46 N. H. 411; Wood v. Inhabitants, 11 Cush. (Mass.) 487; Wilson v. Waltersville School Dist., 44 Conn. 157; Bramwell v. Guheen, 2 Idaho 1069; s. c. 29 Pac. 110.

§ 387. Votes at town meeting—General rules of construction.—Votes upon questions pending in town meetings may be given in any recognized manner in the absence of specific requirements, and need not be by ballot.[157] Nor do the courts expect or demand a scrupulous observance of the most approved formalities; if the proceedings are in substance what they should be, and intelligible, it would be mischievous to set them aside for the want of technical precision; a liberal and favorable construction prevails, especially when no one is injured by it or deprived of any right.[157a] Thus, instruments not under seal executed in pursuance of a vote directing an issue of "bonds" were held to be valid obligations;[158] and a vote to pay a certain bounty "to each drafted man who may be accepted by the board of enrollment" is not void for uncertainty as being applicable to all drafted men wherever they may belong, but only refers to the men drafted to fill the quota of the town.[159] The same rule that applies in construing a statute under the constitution is applied in construing the votes and acts of towns under a law of the state, and if the valid parts of a vote are separable from those that are void, they will be sustained.[160]

§ 388. Record of proceedings.—Where the statute requires that a vote shall be passed by two-thirds of the voters present, a record of a meeting which states that it was "voted," etc., is not sufficient un-

[157] Where a constitution required that all elections by the people should be by ballot it was held that the meetings of district townships were not designed to be elections within the meaning of the term, no judges of election being provided for, etc.: Seaman v. Baughman, 82 Iowa 216; s. c. 47 N. W. 1091. Under a statute providing that any town may, at a town meeting, abolish all school districts therein, a town divided into voting districts can not legally vote in district meetings on the question of abolishing school districts: Comstock v. School Committee &c., 17 R. I. 827; s. c. 24 Atl. 145.

[157a] Soper v. Inhabitants, 28 Maine 193; Kellar v. Savage, 17 Maine 444. "All that is necessary in respect to the manner in which the purpose of a town in raising money shall be expressed in the vote is that the vote should indicate in general terms the purpose or object for which the money is raised, and if that purpose or object is such as comes within the scope of the powers of the town it is sufficient: Blodgett v. Holbrook, 39 Vt. 336.

[158] Lane v. Inhabitants &c., 72 Maine 354.

[159] Baldwin v. Town of North Branford, 32 Conn. 47. A description of a school district as "all the territory between" two given lines is not necessarily defective: Allen v. Archer, 49 Maine 346. See also, Avery v. Stewart, 1 Cush. (Mass.) 496.

[160] Barbour v. Inhabitants &c., 51 Maine 608; Upton v. Stoddard, 47 N. H. 167.

less it shows that it was carried by two-thirds.[161] And where a record that a meeting is "duly or legally notified" is made prima facie sufficient by statute, a record simply stating that the meeting was held "according to notice" is defective.[162] A record of a vote passed "in legal meeting assembled" is not proof that the meeting was specially warned for that purpose.[163] A town was empowered by special act to guaranty a certain amount of the bonds of a railroad company, provided the vote should be passed by ballot at a meeting called for that purpose. The record of a meeting showed that it was warned to vote by ballot on the subject and that the vote in question was "passed." The vote was not, in fact, passed by ballot, but by a division of the house, and the record was subsequently amended by order of the court. In the meanwhile the company, on the strength of the vote, had expended money and made contracts for the delivery of the bonds. The court held that the town was estopped from insisting on the invalidity of the vote.[164]

§ 389. **Parol evidence of proceedings.**—The official record is the proper evidence of the doings of the meeting, and it is not open to contradiction, enlargement or explanation by parol. This general rule applies to the records of towns, parishes, school districts and all similar organizations.[165] But in an action against a town to recover

[161] The maxim "Omnia præsumuntur rite," etc., does not apply: Portland &c. R. Co. v. Inhabitants &c., 65 Maine 63; Andrews v. Inhabitants &c., 110 Mass. 214. Cf. Attorney-General v. Crocker, 138 Mass. 214, 215. An amendment by the clerk stating that "to the best of my recollection" the vote was passed by two-thirds does not cure it. If, however, he had stated it as a fact, the record could not be contradicted by parol testimony, but he might be liable for fraudulent conduct in his office: Judd v. Thompson, 125 Mass. 553.

[162] Seabury v. Howland, 15 R. I. 446; s. c. 8 Atl. 341. It was held that a record is not objectionable because it omits to state the hour the meeting was held when it describes the meeting as that which was notified and the notice appoints the hour: Howland v. School Dist., 15 R. I. 184; s. c. 2 Atl. 549; 8 Atl. 337.

[163] Willard v. Warden &c., 8 Conn. 248, 253. See Isbell v. New York &c. R. Co., 25 Conn. 556, for a sufficient record in such a case.

[164] New Haven &c. R. Co. v. Town of Chatham, 42 Conn. 465. Cf. Brooklyn Trust Co. v. Town of Hebron, 51 Conn. 22.

[165] Halleck v. Inhabitants &c., 117 Mass. 469; Andrews v. Inhabitants &c., 110 Mass. 214; Wood v. Simons, 110 Mass. 116; Adams v. Pratt, 109 Mass. 59; Mayhew v. District of Gay Head, 13 Allen (Mass.) 129; Third School Dist. v. Atherton, 12 Met. (Mass.) 105; Saxton v. Nimms, 14 Mass. 315; Manning v. Inhabitants &c., 6 Pick. (Mass.) 6; Taylor v. Henry, 2 Pick. (Mass.) 397; Pickering v. Pickering, 11 N. H. 141, 144; Jordan v. School Dist., 38 Maine 164; Moore v. Newfield, 4 Maine 44. Parol evidence can not be admitted to show that a vote was passed which the record does not show:

a sum voted to the plaintiff for injuries received by him while in the employ of the town, parol evidence was admitted to show that the amount voted was a mere gratuity and not supported by any claim of legal liability against the town.[166]

§ 390. **Doings of meetings not legally called.**—Where a meeting is not legally warned, all the officers that are chosen hold their offices without authority of law; and a vote to raise money is not binding upon the inhabitants and can not be the proper and legal foundation for the assessment of any tax.[167] A person elected at such a meeting, though sworn into office, can draw from that election no justification for acts done under color of the office;[168] but his acts would be valid and binding to the extent of the rule which applies to the doings of officers de facto.[169] "No one can rely upon a vote of a town as giving him any rights against the town without proving a sufficient notice or warning of the meeting at which it was passed;"[170] and an indictment

Orford v. Benton, 36 N. H. 395, 403; Harris v. School Dist., 28 N. H. 58, 66. Nor is evidence admissible of what the voters intended to do or supposed they had done: Adams v. Crowell, 40 Vt. 31, 34; Cameron v. School Dist., 42 Vt. 507. The record of a school district showed that "it was voted that the district build a new schoolhouse; 16 for and 11 against it." Evidence that seven who voted in the affirmative were not legal voters in the district was properly rejected in replevin for property taken by the tax collector. "The records of the proceedings of municipal public corporations can not be collaterally attacked and overthrown by evidence of this character:" Eddy v. Wilson, 43 Vt. 362. Cf. Davis v. School Dist., 43 N. H. 381, where counsel claimed to appear for a school-district defendant under authority of a vote of the district. The plaintiff offered evidence that at a subsequent meeting the authority was revoked. The court admitted evidence that the vote of revocation was passed by illegal votes. These cases may, perhaps, be reconciled on the ground that in the former the question arose between strangers to the proceedings, while in the latter the dispute was between the parties. Where, according to the usual course of proceeding, the warrant is either recorded or preserved in the office of the town clerk, it can not be proved by parol unless a sufficient reason is shown for not producing the original or a certified copy: Brunswick v. McKean, 4 Maine 508. But it is not in the power of a clerk to destroy the effect of the action of a meeting by failing or refusing to record the proper papers to show that the meeting was regularly called and notified so long as clear proof of those facts can be made aliunde: Marble v. McKenney, 60 Maine 332.

[166] Matthews v. Inhabitants &c., 134 Mass. 555.

[167] Osgood v. Blake, 21 N. H. 550, 564; Grafton Bank v. Kimball, 20 N. H. 107.

[168] Bearce v. Fossett, 34 Maine 575.

[169] School Dist. v. Lord, 44 Maine 374.

[170] Per Justice Gray in Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865. A contract made with a school district by a member

against a person for illegal voting at a town meeting can not be sustained unless the meeting was legally warned.[171]

§ 391. **Presumptions in favor of ancient meetings.**—No presumption is indulged in favor of the essential regularity of recent proceedings of town meetings;[172] but it is otherwise where from lapse of time there is a probability that the officers who made the record are no longer living, or have lost a recollection of the facts so that no amendment can be made, or where it is proved that such officers have deceased so that the records can not be corrected.[173] After the lapse of thirty years it was held that a jury might presume that a warrant for a town meeting which was shown to have been properly posted remained posted during the time required by law.[174] The records of the proprietors of a town purporting to have been made in 1728 contained the proceedings of a meeting held at that time. It did not appear that there was any notice for the meeting, nor did the records appear to be attested by any clerk or recording officer, but they were produced by the town clerk, who testified that he received them from his predecessor in office together with the other records of the town. They were held to be competent evidence to be submitted to a jury as to the doings of the meeting.[175]

thereof at a meeting not legally warned is binding upon neither party: School Dist. v. Atherton, 12 Met. (Mass.) 105.

[171] State v. Williams, 25 Maine 561. But after a decree of foreclosure in favor of a town, a vote at a meeting not warned for that purpose extending the period of redemption is sufficient in equity to prevent the decree from becoming absolute upon the day named: Daggett v. Town of Mendon, 64 Vt. 323; s. c. 24 Atl. 242.

[172] Bloomfield v. Charter Oak Bank, 121 U. S. 121; s. c. 7 S. Ct. 865; Cavis v. Robertson, 9 N. H. 524; overruling Bishop v. Cone, 3 N. H. 513, 515.

[173] Cavis v. Robertson, 9 N. H. 524; Gibson v. Bailey, 9 N. H. 168. It was said in those cases that under such circumstances it may be submitted to a jury to presume from a defective record of the election of a town officer and from his having acted under the appointment that the meeting was duly held, the proceedings of the town regular and the officer duly sworn; but this can not be done where the proceedings are recent and no reason is shown why the record can not be amended if the truth will warrant it: Brownell v. Palmer, 22 Conn. 107 (twenty-five years sufficient); State v. Taff, 37 Conn. 392 (fifteen years too short a time); Peterborough v. Lancaster, 14 N. H. 383 (thirty-eight years sufficient).

[174] "It does not appear that the officers who made the record are dead, but it is a fair presumption that they have lost recollection of the fact," etc.: Schoff v. Gould, 52 N. H. 512, and cases there cited. "It is not to be presumed that the meeting is not both legal and regular because there is now no record showing that it was so:" Willey v. Portsmouth, 35 N. H. 303, 309. See also, School Dist. v. Bragdon, 23 N. H. 507, 514.

[175] Adams v. Stanyan, 24 N. H. 405; citing as to want of attestation, Inhabitants &c. v. Inhabitants &c., 3

§ 392. Notice of election.—Where both the time and place of a general election are fixed by law the requirement of notice is directory, and the election is not vitiated by the failure of the authorities to make the publication.[176] But in the case of special elections, when either the time or place is not prescribed by law, the provision for notice is mandatory[177] when notice is necessary. An election called by an unauthorized person is void; it has no greater validity than the unauthorized action of a mass meeting would have.[178] But where notice is to be given by a board, a notice signed by the clerk in which it appears that the election was ordered by the board is sufficient.[179] Where the statute confers upon the mayor of a city the power of proclaiming an election, it may be exercised in the mayor's absence by one whom the charter vests with the powers of

Greenl. (Maine) 223. The record of the choice of a person as hog-reeve and field driver and proof of his service as such for one year suffices for the presumption in question: Northwood v. Barrington, 9 N. H. 369 (forty years).

[176] Smith v. Crutcher, 92 Ky. 586; s. c. 18 S. W. 521; Paine Elections, § 384; citing Carson v. McPhetridge, 15 Ind. 327; Light v. State, 14 Kan. 489; People v. Cowles, 13 N. Y. 350; People v. Porter, 6 Cal. 26; People v. Weller, 11 Cal. 49; s. c. 70 Am. D. 754; People v. Brenham, 3 Cal. 477; Cooley Const. Lim. 759; Dickey v. Hurlburt, 5 Cal. 343; State v. Jones, 19 Ind. 356; s. c. 81 Am. D. 403; People v. Hartwell, 12 Mich. 508; s. c. 86 Am. D. 70; City of Lafayette v. State, 69 Ind. 218; Dishon v. Smith, 10 Iowa 212; Jones v. Gridley, 20 Kan. 584; State v. Orvis, 20 Wis. 248; State v. Goetze, 22 Wis. 363; People v. Martin, 12 Cal. 409; People v. Rosborough, 14 Cal. 180. See also, Commonwealth v. Smith, 132 Mass. 289; State v. Skirving, 19 Neb. 497; s. c. 27 N. W. 723. As to notices of vacancies to be filed at a regular election, see People v. Cowles, 13 N. Y. 350; People v. Weller, 11 Cal. 49; s. c. 70 Am. D. 754; People v. Crissey, 91 N. Y. 616; Beal v. Ray, 17 Ind. 554; State v. Good, 41 N. J. L. 296; People v. Rosborough, 29 Cal. 415; People v. Porter, 6 Cal. 26; People v. Martin, 12 Cal. 409; Foster v. Scarff, 15 Ohio St. 532.

[177] United States v. McKelden, MacArth. & M. 162; State v. Mayor &c., 44 N. J. L. 137; Kenfield v. Irwin, 52 Cal. 164; Hubbard v. Town of Williamstown, 61 Wis. 397; s. c. 21 N. W. 295; People v. Crissey, 91 N. Y. 616; Haddox v. Clarke Co., 79 Va. 677. Unless an election is fixed by law there must be some notice, though none is required by the statute: McPike v. Pen, 51 Mo. 63.

[178] Force v. Town of Batavia, 61 Ill. 99.

[179] Smith v. Board &c., 45 Fed. 725. See also, Williams v. People, 132 Ill. 574; s. c. 24 N. E. 647; and § 362, ante. An error in the proclamation must, in order to invalidate the election, appear from proofs or by necessary intendment to have so affected the election as to have changed the result. On this point the court will not indulge in speculation or mere conjecture: In re Petition of Cleveland, 51 N. J. L. 319; s. c. 18 Atl. 67; 52 N. J. L. 188; 19 Atl. 17; 30 Am. & Eng. Corp. Cas. 230. See also, San Luis Obispo Co. v. White, 91 Cal. 432; s. c. 24 Pac. 864; 27 Pac. 756, where the clerk affixed a scroll to the proclamation instead of a seal required by statute.

mayoralty in such a contingency;[180] and the service of notice by an officer de facto will not affect the validity of the election.[181]

§ 393. Qualifications of voters—Power to prescribe.—The qualifications of voters are fixed by the constitutions or statutes of the states, and the right of each state to define the qualifications of its voters is complete and perfect, except so far as it is controlled by the fifteenth article of the amendments to the constitution of the United States, which provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[182] But it is not competent for the legislature to add a substantive qualification to those prescribed by the constitution, unless that instrument confers the power in express terms or by necessary implication.[183] Thus, where the constitution requires residence in the state for a certain period, a statute which requires residence in the ward, city or township is void.[184] And a provision in a village charter limiting the right to vote to those who have resided within the village

[180] In re Petition of Cleveland, 51 N. J. L. 319; s. c. 18 Atl. 67; 52 N. J. L. 188; 19 Atl. 17; 30 Am. & Eng. Corp. Cas. 230.

[181] Bird v. Merrick, Lor. & R. (Mass. Elec. Cas.) 115.

[182] Blair v. Ridgely, 41 Mo. 63; s. c. 97 Am. D. 248; Anderson v. Baker, 23 Md. 531; United States v. Reese, 92 U. S. 214; United States v. Cruikshank, 92 U. S. 542; Minor v. Happersett, 21 Wall. 162; Kinneen v. Wells, 144 Mass. 497; s. c. 11 N. E. 916; 59 Am. R. 105; Van Valkenburg v. Brown, 43 Cal. 43; s. c. 13 Am. R. 136; Huber v. Reily, 53 Pa. St. 112; Ridley v. Sherbrook, 3 Coldw. (Tenn.) 569; United States v. Anthony, 11 Blatch. 200; State v. Staten, 6 Coldw. (Tenn.) 233. The state may also regulate nominating conventions and caucuses: Leonard v. Commonwealth, 112 Pa. St. 607; s. c. 4 Atl. 220; In re House Bill, 9 Colo. 624; s. c. 21 Pac. 472.

[183] Page v. Hardin, 8 B. Mon. (Ky.) 648; Quinn v. State, 35 Ind. 485; s. c. 9 Am. R. 754; Rison v. Farr, 24 Ark. 161; s. c. 87 Am. D. 52; Thomas v. Owens, 4 Md. 189; Clayton v. Harris, 7 Nev. 64; State v. Symonds, 57 Maine 148; State v. Corner, 22 Neb. 265; s. c. 34 N. W. 499; 3 Am. St. 267; 17 Am. & Eng. Corp. Cas. 453; Kinneen v. Wells, 144 Mass. 497; s. c. 11 N. E. 916; 59 Am. R. 105; St. Joseph &c. R. Co. v. Buchanan County Court, 39 Mo. 485; Barker v. People, 3 Cowen (N. Y.) 686; s. c. 15 Am. D. 322; People v. Canaday, 73 N. C. 198; s. c. 21 Am. R. 465; White v. Commissioners &c., 13 Or. 317; s. c. 10 Pac. 484; 57 Am. R. 20, n.; Monroe v. Collins, 17 Ohio St. 665; Daggett v. Hudson, 43 Ohio St. 548; s. c. 3 N. E. 538; 54 Am. R. 832; State v. Constantine, 42 Ohio St. 437; s. c. 51 Am. R. 833; State v. Tuttle, 53 Wis. 45; s. c. 9 N. W. 791; State v. Baker, 38 Wis. 71; State v. Williams, 5 Wis. 308; Davies v. McKeeby, 5 Nev. 369; State v. Staten, 6 Coldw. (Tenn.) 233; United States v. Slater, 4 Wood 356; Randolph v. Good, 3 W. Va. 551; McCafferty v. Guyer, 59 Pa. St. 109.

[184] Quinn v. State, 35 Ind. 485; s. c. 9 Am. R. 754.

for twenty days immediately preceding the election conflicts with a constitution prescribing residence for no definite period.[185] An act which restricts the right to vote to taxable inhabitants is repugnant to a constitution which is silent respecting property qualification.[186]

§ **394. Registration acts.**—It is held by the decided weight of authority that when the constitution is silent on the subject of registration it is competent for the legislature to require voters to be registered a reasonable time before the election, or to be debarred of the right to vote.[187] "The true rule is that whenever a registration is ordered it should give the voters an opportunity as near the day of election as practicable for qualifying themselves as electors. All the authorities agree in holding that if the length of time between the closing of the registration and the election is unreasonable, the elec-

[185] State v. Tuttle, 53 Wis. 45; s. c. 9 N. W. 791. See also, People v. Canaday, 73 N. C. 198; s. c. 21 Am. R. 465; Kinneen v. Wells, 144 Mass. 497; s. c. 11 N. E. 916; 59 Am. R. 105.

[186] St. Joseph &c. R. Co. v. Buchanan County Court, 39 Mo. 485. Cf. McMahon v. Mayor &c., 66 Ga. 217; s. c. 42 Am. R. 65; Buckner v. Gordon, 81 Ky. 665.

[187] Capen v. Foster, 12 Pick. (Mass.) 485; s. c. 23 Am. D. 632; Hyde v. Brush, 34 Conn. 454; People v. Kopplekom, 16 Mich. 342; Edmonds v. Banbury, 28 Iowa 267; s. c. 4 Am. R. 177; People v. Laine, 33 Cal. 55; Webster v. Byrnes, 34 Cal. 273; Byler v. Asher, 47 Ill. 101; People v. Wilson, 62 N. Y. 186; Davis v. School Dist., 44 N. H. 398; Patterson v. Barlow, 60 Pa. St. 54; Auld v. Walton, 12 La. An. 129; Harris v. Whitcomb, 4 Gray (Mass.) 433; Smith v. City of Wilmington, 98 N. C. 343; s. c. 4 S. E. 489; Southerland v. Board &c., 96 N. C. 49; s. c. 1 S. E. 760; 17 Am. & Eng. Corp. Cas. 393; Duke v. Brown, 96 N. C. 127; s. c. 1 S. E. 873; McDowell v. Massachusetts &c. Const. Co., 96 N. C. 514; s. c. 2 S. E. 351; Wood v. Town of Oxford, 97 N. C. 227; s. c. 2 S. E. 653; State v. Baker, 38 Wis. 71; Monroe v. Collins, 17 Ohio St. 665; Daggett v. Hudson, 43 Ohio St. 548; s. c. 3 N. E. 538; 54 Am. R. 832; State v. Butts, 31 Kan. 537; s. c. 2 Pac. 618; In re Polling Lists, 13 R. I. 729; People v. Hoffman, 116 Ill. 587; s. c. 5 N. E. 596; 8 N. E. 788; 56 Am. R. 793; Stephens v. Mayor &c., 84 Ga. 630; s. c. 11 S. E. 150; 30 Am. & Eng. Corp. Cas. 282; State v. Corner, 22 Neb. 265; s. c. 34 N. W. 499; 3 Am. St. 267; 17 Am. & Eng. Corp. Cas. 453; McMahon v. Mayor, 66 Ga. 217; s. c. 42 Am. R. 65; People v. Canaday, 73 N. C. 198; s. c. 21 Am. R. 465; Commonwealth v. McClelland, 83 Ky. 686. See also, Kinneen v. Wells, 144 Mass. 497; s. c. 11 N. E. 916; 59 Am. R. 105; Cooley Const. Lim. (6th ed.) 756 et seq.; McCrary Elections, § 95 et seq.; Paine Elections, § 340 et seq.; Mechem Public Offices and Officers, § 149. Contra, Page v. Allen, 58 Pa. St. 338; Dells v. Kennedy, 49 Wis. 555; s. c. 6 N. W. 246, 381; White v. Commissioners &c., 13 Or. 317; s. c. 10 Pac. 484; 54 Am. R. 832, n.; 12 Am. & Eng. Corp. Cas. 485; State v. Corner, 22 Neb. 265; s. c. 34 N. W. 499; 3 Am. St. 267; 17 Am. & Eng. Corp. Cas. 453, holds that the voter can not be deprived of the right to register at any time before the closing of the polls.

tion should be held void."[188] Accordingly, a law which allowed only seven days in the year for voters to register was declared to be subversive of constitutional right and therefore void;[189] and a statute providing that no person thereafter naturalized should be entitled to be registered within thirty days after such naturalization was open to the same objection;[190] but an act fixing three weeks before the election for the completion of the registry was sustained.[191]

§ 395. **Place of election.**—Where a statute incorporating a municipality enumerates the officers to be chosen and prescribes the qualifications of voters, but does not designate any polling-place, the voters have the implied right to supply the omission.[192] But if elections are required by law to be held at fixed times and places these can not be changed except by direct legislative authority;[193] time and place are of the substance of every election, and statutory provisions by which they are definitely fixed are mandatory and must be obeyed.[194] Where the polls were opened at a distance of three miles from the place appointed, without any just excuse, the election was void.[195] Chief Justice Thompson, of the supreme court of Pennsylvania, expounded the law in point as follows: "I will not say that in case of the destruction of a designated building on the eve of an election, the elec-

[188] Stephens v. Mayor &c., 84 Ga. 630; s. c. 11 S. E. 150; 30 Am. & Eng. Corp. Cas. 282. Laws regulating the exercise of the right of suffrage must be reasonable, uniform and impartial, and must be calculated to facilitate and secure rather than to subvert or impede the exercise of the right to vote: Daggett v. Hudson, 43 Ohio St. 548; s. c. 3 N. E. 538; 54 Am. R. 832; Monroe v. Collins, 17 Ohio St. 666, 687.

[189] Daggett v. Hudson, 43 Ohio St. 548; s. c. 3 N. E. 538; 54 Am. R. 832.

[190] Kinneen v. Wells, 144 Mass. 497; s. c. 11 N. E. 916; 59 Am. R. 105. This was because the regulation was not uniform and impartial.

[191] People v. Hoffman, 116 Ill. 587; s. c. 5 N. E. 596; 8 N. E. 788; 56 Am. R. 793. And ten days was held reasonable: State v. Butts, 31 Kan. 537; s. c. 2 Pac. 618. For unreasonable registration laws, see City of Owensboro v. Hickman, 90 Ky. 629; s. c. 14 S. W. 688; Morris v. Powell, 125 Ind. 281; s. c. 25 N. E. 221; Stephens v. Mayor &c., 84 Ga. 630; s. c. 11 S. E. 150. When an eligible person has been duly registered he continues to have the right to vote until he loses or is dispossessed of it according to law. Where the mayor and aldermen without authority ordered a new registration, the election was void: Smith v. City of Wilmington, 98 N. C. 343; s. c. 4 S. E. 489.

[192] State v. Burbridge, 24 Fla. 112; s. c. 3 So. 869.

[193] City Council v. Youmans, 85 Ga. 708, 712; s. c. 11 S. E. 865.

[194] McCrary Elections (3d ed.), § 141; Paine Elections, § 327.

[195] Heyfron v. Mahoney, 9 Mont. 497; s. c. 24 Pac. 93; Knowles v. Yeates, 31 Cal. 82, 92. See also, Commonwealth v. County Com'rs, 5 Rawle (Pa.) 75; Juker v. Commonwealth, 20 Pa. St. 484; Miller v. English, 21 N. J. L. 317; Ex parte Robinson, 3 Pug. (N. B.) 389.

tion might not be held on the same or contiguous ground as a matter of necessity—necessitas non habet legem. But then the necessity must be absolute, discarding all mere ideas of convenience. * * * To move the place of an election three miles from that designated by law or to a place more than half a mile distant therefrom without authority or any absolute controlling circumstances must render the election therein void."[196] But the circumstances which do not affect the result when the place designated has been changed are shown in another case, where the polls were opened a short distance from and in plain view of the place appointed, the owner of the house selected having objected to the use of it for that purpose, and no voter being misled or deprived of his vote. The court held that the election was legal.[197]

§ **396. The same subject continued.**—A statute provided that "whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor, the town board of inspectors, after having assembled at or as near as practicable to such place and opened the meeting and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same." They were also required to make proclamation of the adjournment and to station a proper person at the door to notify electors as they arrived. Polls were to be opened at town meetings at nine o'clock. The record showed that a meeting was legally called, and upon motion it was voted to adjourn to a certain place, where the board met pursuant to the adjournment and called the meeting to order at nine o'clock. The court held that the law would presume the first meeting to have been opened only a few minutes before nine; that whether the place was impossible or inconvenient and whether the adjourned meeting was held at the nearest and most convenient place were matters solely for the judgment of the board; and that a failure to make proclamation or to station any one at the door to give notice would not avoid the election unless there was affirmative proof that the electors were thereby kept from the meeting.[198] The neglect to close the polls at the prescribed time is not a fatal irregularity if the result of the election is not affected;[199] and an election was pro-

[196] Melvin's Case, 68 Pa. St. 333, 338.

[197] Preston v. Culbertson, 58 Cal. 198, 209; in quatuor pedibus, Dale v. Irwin, 78 Ill. 170, 180. See also, Steele v. Calhoun, 61 Miss. 556; Farrington v. Turner, 53 Mich. 27; s. c. 18 N. W. 544; Wakefield v. Patterson, 25 Kan. 709.

[198] Wisconsin &c. R. Co. v. Ashland Co., 81 Wis. 1; s. c. 50 N. W. 937.

[199] Holland v. Davies, 36 Ark. 446; Knox Co. v. Davis, 63 Ill. 405; Cleland v. Porter, 74 Ill. 76.

nounced valid where the closing of the polls was one hour premature, no elector having been thereby deprived of his right.[200]

§ 397. **Popular elections—Plurality.**—"It is the theory and general practice of our government that the candidate who has but a minority of the legal votes cast does not become a duly elected officer. But it is also the theory and practice of our government that a minority of the whole body of qualified electors may elect to an office, when a majority of that body refuse or decline to vote for any one for that office. Those of them who are absent from the polls in theory and practical result are assumed to assent to the action of those who go to the polls."[201] Furthermore, it is not necessary that a candidate for office shall have an absolute majority of all the votes cast at a popular election. "At an election, by common law, it is only necessary that there should be a majority for one candidate over every other [any other] candidate. There may be as many candidates as there are electors, less one, and the votes of two would carry the election, however numerous the electors, if all the others voted for separate candidates, and the vote of one would be a lawful election if no other elector voted."[202]

[200] People v. Cook, 8 N. Y. 67.

[201] Per Folger, J., in People v. Clute, 50 N. Y. 451, 461; Verbeck v. Scott, 71 Wis. 59; s. c. 36 N. W. 600; Rex v. Varlo, Cowp. 248; Field v. Field, 9 Wend. (N. Y.) 394. "All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of the greatest inconvenience, and ought not to be adopted unless the legislative will to that effect is clearly expressed:" Cass Co. v. Johnston, 95 U. S. 360, 369, per Waite, C. J.

[202] Gosling v. Veley, 4 H. L. Cas. 679, 740, per Martin, B.; Throop Public Agents, § 139; citing Paine Elections, §§ 173, 174; Naar Elections 147; Cooley Const. Lim. (5th ed.) 779. See also, State v. Green, 37 Ohio St. 227; People v. Clute, 50 N. Y. 451, 461; Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 6 L. R. A. 308; and especially, People v. Stone, 78 Mich. 635, 639; s. c. 44 N. W. 333, cited in § 156, ante, where the plurality rule was applied to elections by definite bodies; and a fortiori, that doctrine would govern in popular elections. State v. Wilmington, 3 Harr. (Del.) 294, lays down a contrary rule as the common law, but Harrington, J., dissented, "as it would seem, with reason," says Judge Dillon: Dillon Munic. Corp., § 277, n. A dictum in State v. Fagan, 42 Conn. 32, 35, is squarely opposed to the text. The matter in issue was the validity of a (popular) school district election. The court said:—"Viewing the questions raised in this case to be determined, as we do, entirely by statute, it is quite unnecessary to consider what the rule of the common law may be as to the effect of a plurality vote, or the necessity for a majority vote to make a valid election. Our government and our institutions rest on the principle that controlling power

§ 398. **The same subject continued—Majorities, etc.**—The following expressions in statutory or constitutional provisions as to an election have been held to mean a majority, two-thirds, etc., as the case may be, of those actually voting, and not a majority of all who might have voted: "a majority of such electors;"[203] "two-thirds of such qualified voters;"[204] "wishes of a majority of the members * * * expressed at a church election;"[205] "majority of the legal voters;"[206] "two-thirds of the qualified voters of the township voting at such election;"[207] "three-fifths of the voters of said city;"[208] "three-fifths of the voters therein voting;"[209] "two-thirds of the qualified voters;"[210] "majority of the voters;"[211] "majority of the legal voters."[212]

§ 399. **Voting by ballot.**—Where a statute provides that the election of certain officers at a town meeting shall be by ballot if called for, this does not necessarily imply that they must be voted for each

is vested in the majority. In the absence of any provision by law to the contrary, the will of any community or association, body politic or corporate, is properly declared only by the voice of the majority."

[203] Taylor v. Taylor, 10 Minn. 107; Bayard v. Klinge, 16 Minn. 249; Everett v. Smith, 22 Minn. 53.

[204] State v. Renick, 37 Mo. 270. See also, State v. Binder, 38 Mo. 450.

[205] Craig v. First Presbyt'n Church, 88 Pa. St. 42.

[206] St. Joseph Tp. v. Rogers, 16 Wall. 644.

[207] Cass Co. v. Johnston, 95 U. S. 360.

[208] Yesler v. City of Seattle, 1 Wash. 308; s. c. 25 Pac. 1014.

[209] Metcalfe v. City of Seattle, 1 Wash. 297; s. c. 25 Pac. 1010; State v. Snodgrass, 1 Wash. 305; s. c. 25 Pac. 1014.

[210] Carroll Co. v. Smith, 111 U. S. 556; s. c. 4 S. Ct. 539. Contra, State v. Sutterfield, 54 Mo. 391; Southerland v. Board &c., 96 N. C. 49; s. c. 1 S. E. 760.

[211] Louisville &c. R. Co. v. Davidson County Court, 1 Sneed (Tenn.) 637; People v. Wiant, 48 Ill. 263; People v. Warfield, 20 Ill. 160; People v. Garner, 47 Ill. 246, holding that the vote cast at a general election is prima facie evidence of the number of legal voters in the county; Taylor v. Taylor, 10 Minn. 107, to the same point; State v. Binder, 38 Mo. 450. Contra, People v. Brown, 11 Ill. 478. "A vote of the majority of qualified voters therein:" Chester &c. R. Co. v. Commissioners &c., 72 N. C. 486.

[212] "Legal voter" means a "qualified elector" who does in fact vote: Sanford v. Prentice, 28 Wis. 358. "Provided that a majority of," etc., "shall be present . . . and shall vote," prevents action by less than a majority of the whole: Point Pleasant Land Co. v. Trustees, 47 N. J. L. 235; State v. Trustees, 49 N. J. L. 607; s. c. 10 Atl. 191. See also, an article by Irving Browne, Esq., on "What Constitutes a Majority of Electors?" in 22 Alb. L. J. 44. Under a constitutional provision that the legislature shall have no power to remove a county seat, and that no county seat shall be removed unless a majority of the electors vote for its removal, the legislature may provide that there shall be no removal unless two-thirds of the electors vote for it: Alexander v. People, 7 Colo. 155; s. c. 2 Pac. 894.

upon a separate and single ballot and in succession, one after another: it would be competent for the meeting to direct by vote properly taken that all the officers to be elected, or a part of them as might be deemed expedient, be voted for together on the same ballot in a manner similar to that in which state and county officers are voted for; this would give each voter the right and opportunity to cast his vote for the very man of his choice for each office by making up his ballot with the names of such men. But this can not be done where a ticket is nominated by a committee and the voters are required to accept or reject the whole report. The privilege of voting for some of the nominees and against the rest, and for somebody else in their stead,—to "scratch the ticket," as the modern expression is,—can not be lawfully denied to the voter. And although the mode of voting on a ticket as an entirety may have been used without objection in previous meetings, it does not become binding upon any one; it is not a case for the loss of a right by non-user or acquiescence or the gaining of a right by adverse use.[218]

§ 400. **The same subject continued.**—At a village meeting a ballot was taken for moderator. Many were present besides lawful voters, who were mixed indiscriminately in the crowd and were participating in the excitement and uproar that characterized the scene. Tellers with hats made their way through the crowd, and it was impossible to know whether some voters, legal or illegal, did not deposit more than a single vote, or that a single voter did not put a vote or votes into more than one hat. The court in condemning the proceedings said: "However proper such a mode of voting may be on some special occasions when the voters are few and are well-known and reliable men, and the excitement of hostile interests is not operating to prompt to anything but fair and legal voting, and when it would at once be manifest if illegal votes should be cast, nothing that could be said upon the subject could make more palpable the gross impropriety of taking the vote as it was done in this case. It was but a burlesque and a mockery of all sensible and sober ideas of a ballot answerable to the lawful right of the citizen and to the soundness with which the exercise of that right is hallowed in the speech, at least, of the demagogue, as well as of the ingenuous citizen. It is of no avail to say that it was difficult to take the vote in any other way. It would have been in point and cogent to answer that it better not have been taken at all than to be taken as it was. It is at the bottom of all honest and just ideas of a proper vote that some mode should be adopted by which it may be known by persons authorized to determine a ques-

[218] State v. Harris, 52 Vt. 216, 226.

tioned right to vote what persons offer to cast votes, or to vote by voice or by count, that the right of any such may be challenged and properly determined, and that in voting by ballot it may, with all practicable certainty, be known whether more votes have been cast than there are legal voters to cast them."[214]

§ **401. The Australian ballot and cumulative voting.**—The Australian ballot system, as it is called, has been adopted by statute in many of the states.[215] The main feature of this system is that each voter is provided with an official ballot. Upon this the names of the candidates are printed, and the use of any other paper as a ballot is forbidden. But blank spaces are left for the insertion of any names that may be desired. These statutes are not in conflict with the constitutional requirement that "elections shall be free and equal," although the privilege of having ballots printed at the expense of the state is granted only when the number of those who support a particular ticket is equal to a certain percentage of the whole number of votes cast at a previous election.[216] An attempt has been made in Ohio and Michigan to provide for minority representation by statute in the absence of express constitutional authority; and in New York there has been legislation sanctioning cumulative voting in certain cases. The supreme court of Ohio held that every elector is entitled to vote for every candidate who is to be elected, and a law which denied the right to vote for more than two of the persons to be chosen was declared to be unconstitutional;[217] and this rule has been followed in Michigan.[218] The question has been twice before the court of appeals of New York, but the tribunal has found a way of disposing of the cases without passing upon the constitutionality of the law.[219] It is significant, however, that all the other states which

[214] State v. Harris, 52 Vt. 216, 222. The court held that quo warranto lies against a moderator elected by the vote of those who had no right to vote, and that where the statute requires an election to be by ballot, "if called for," it is the right of a single voter to have a ballot upon his demand when heard and understood by the presiding officer. If a moderator who is illegally chosen presides at a meeting, and a distinct and contemporaneous protest is made, it is at least doubtful if the proceedings are of any validity whatever. See on this point, § 372, n. 88, ante.

[215] For an enumeration of the states and a citation of the legislative acts, see Amer. Dig. Ann. 1891, p. 1417, § 66; Ibid., 1892, p. 1634, § 93 et seq.

[216] De Walt v. Bartley, 146 Pa. St. 529; s. c. 24 Atl. 185; State v. McMillan, 108 Mo. 153; s. c. 18 S. W. 784.

[217] State v. Constantine, 42 Ohio St. 437. See also, Hays v. Commonwealth, 82 Pa. St. 518.

[218] Maynard v. Board &c., 84 Mich. 228; s. c. 47 N. W. 756.

[219] People v. Crissey, 91 N. Y. 616; People v. Kenney, 96 N. Y. 294.

have authorized such voting have submitted it to the people for their adoption as part of their fundamental law, and it is not likely that it can be successfully introduced in any other way.

§ 402. **Absolute accuracy not required in a ballot.**—Voting is usually required to be by ballot, but that method is not imperative in the absence of such a requirement.[220] Voting by proxy is not permitted, but a ballot deposited by another in the voter's presence and at his request would not be rejected.[221] The names of the persons voted for should be expressed with reasonable certainty, but incorrect spelling will not vitiate a ballot if the name is idem sonans. The rule was recently stated by the supreme court of Illinois, as follows: "A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective rather than in favor of a conclusion which will on some technical ground render it ineffective. At the same time it is not admissible to show that something was intended which is contradictory of what was done, and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded."[222]

[220] Mechem Public Offices and Officers, § 190.

[221] Opinion of Justices, 41 N. H. 550; People v. Blodgett, 13 Mich. 127; Clark v. Robinson, 88 Ill. 498.

[222] Behrensmeyer v. Kreitz, 135 Ill. 591; s. c. 26 N. E. 704. Accordingly, in that case, where the plaintiff was a candidate and his name, though properly pronounced in four syllables, was sometimes syncopated into two, it was held lawful to count for him ballots on which the name was written respectively: Behrenmeyer, Behrsmeyer, Bauersmyer, Bernshmyer, Benshmyer, Benshmyre, Benere, Bensmyer, Bernsmere, Bornsmoer, Berhensmeyer, Bernstmeyer, Berensmyer, Bernmyer, Bernsmier, Behrensmier, Benmyr, Berenmyer, Behrnsmeyer, Berntsmire, Behrens, Behrn, Benhmyer, Berhenmeyer and Behrsyer. Considerable deviations and omissions are allowed where there is no other candidate of the same name, such as the omission of a middle letter: People v. Kennedy, 37 Mich. 67; State v. Gates, 43 Conn. 533 (a wrong middle letter; cf. Opinion of Judges, 38 Maine 598); or of a suffix: People v. Cook, 14 Barb. (N. Y.) 259; s. c. 59 Am. D. 451. Initials of the first name are sufficient: Attorney-General v. Ely, 4 Wis. 420; People v. Ferguson, 8 Cowen (N. Y.) 102; People v. Seaman, 5 Denio (N. Y.) 409; People v. Cook, 8 N. Y. 67; Chapman v. Ferguson, 1 Bart. El. Cas. 267. Contra, People v. Tisdale, 1 Doug. (Mich.) 59; People v. Higgins, 3 Mich. 233; s. c. 61 Am. D. 491; People v. Cicott,

§ 403. Votes for ineligible candidates.—It is the rule in England that if an ineligible candidate has a majority of valid votes the person having the next highest number is not elected, and there must be a new election. If the voter is ignorant of the fact of disqualification,[223] or of disqualification as a conclusion of law,[224] his vote is valid for the purpose of being counted.[225] In the United States "the great current of authority sustains the doctrine that the ineligibility of the majority candidate does not elect the minority candidate, and this without reference to the question as to whether the voters knew of the ineligibility of the candidate for whom they voted. It is considered that in such a case the votes for the ineligible candidate are not void."[226] But the authorities are not entirely uniform. Thus, in New York, as in England, knowledge is an element in the

16 Mich. 282; s. c. 97 Am. D. 141. See also, Opinion of Judges, 64 Maine 596; Clark v. Board &c., 126 Mass. 282. Common abbreviations of the first name are not fatal: Reg. v. Bradley, 3 El. & El. 634; People v. Ferguson, 8 Cowen (N. Y.) 102; Chumasero v. Gilbert, 26 Ill. 39; Gillham v. President &c., 2. Scam. (Ill.) 245; Bank v. Peel, 11 Ark. 750. Nor in one case was its total omission: Talkington v. Turner, 71 Ill. 234. But if there is a radical departure the ballot must be thrown out: People v. Cicott, 16 Mich. 282; State v. Judge &c., 13 Ala. 805. See also, on this subject, Paine Elections, § 540 et seq.; Mechem Public Offices and Officers, § 199 et seq.

[223] Gosling v. Veley, 7 Ad. & El. (N. S.) 406; s. c. 4 H. L. Cas. 679; Reg. v. Mayor &c., L. R. 3 Q. B. 629; Reg. v. Coaks, 3 El. & Bl. 249; Claridge v. Evelyn, 5 B. & Ald. 81; Rex v. Monday, 2 Cowp. 530; Rex v. Hawkins, 10 East 211; Rex v. Bridge, 1 M. & S. 76.

[224] Reg. v. Mayor &c., L. R. 3 Q. B. 629, holding that the maxim "Ignorantia legis non excusat" has no application.

[225] See also, for the rule in Ireland, In re Tipperary Elec., 9 Ir. R. C. L. 217; Reg. v. Franklin, 6 Ir. R. C. L. 239; Trench v. Nolan, 6 Ir. R. C. L. 464; s. c. 27 L. T. R. 69. But the next highest candidate is elected if the ineligibility both as to fact and law was known and notorious: Rex v. Hawkins, 10 East 211; King v. Parry, 14 East 549; Gosling v. Veley, 7 Ad. & El. (N. S.) 406; s. c. 4 H. L. Cas. 679; Rex v. Monday, 2 Cowp. 530; Rex v. Foxcroft, 2 Burr. 1017; Reg. v. Coaks, 3 El. & Bl. 249; Trench v. Nolan, 2 Moak 711. See also, Cooley Const. Lim. (6th ed.) 780.

[226] Privett v. Bickford, 26 Kan. 52, 57; Crawford v. Dunbar, 52 Cal. 36; Saunders v. Haynes, 13 Cal. 145; In re Corliss, 11 R. I. 638; State v. Smith, 11 Wis. 65; State v. Smith, 14 Wis. 497; People v. Molitor, 23 Mich. 341; Hoskins v. Brantley, 57 Miss. 814; Sublett v. Bedwell, 47 Miss. 266; s. c. 12 Am. R. 338; Wood v. Bartling, 16 Kan. 109, 114; Barnum v. Gilman, 27 Minn. 466; s. c. 8 N. W. 375; State v. Gastinel, 20 La. An. 114; State v. Boal, 46 Mo. 528; State v. Vail, 53 Mo. 97; Dryden v. Swinburne, 20 W. Va. 89; Commonwealth v. Cluley, 56 Pa. St. 270; State v. Walsh, 7 Mo. App. 142, where the death of the majority candidate before the polls were opened, though it was known to the voters, did not result in giving the election to the next highest.

case, but information of both fact and law must be brought directly to the notice of the voter in order to render the vote a nullity;[227] while in Indiana it is held that voters are conclusively presumed to know of a candidate's constitutional disqualification by reason of holding another office within the election district, and the next highest candidate is elected.[228]

§ 404. **Putting up offices at auction—Tax collector.**—The office of tax collector was set up at auction in a town meeting and struck off to the lowest bidder, and the town afterwards at the same meeting chose the same person collector. It was held that the proceeding was illegal. The court said: "Of the impropriety of putting up any office at auction I can entertain no doubt. * * * The direct tendency of such a practice is to introduce unsuitable persons into public employment—to induce the electors to give their suffrages to him who will work cheapest instead of him who is best qualified. And if an office which is supposed to be onerous and to deserve compensation may be offered to him who is disposed to serve for the lowest wages, it is not apparent why those to which some honor is attached may not be offered to him who is willing to give most for the privilege of executing them. The formality of an election may be had afterwards in the one case as well as in the other. In fact, the office of collector has, in one instance at least, been deemed such an object of competition as to produce an offer of a nominal even if it was not an actual consideration duly paid. In a case recently tried in another county the following was among the records produced: 'Voted, that the collectorship should be set up to the best bidder. J—— M—— agreed to give one and a half mugs of toddy for the privilege of collecting.' No evidence of the impropriety of setting up the office at auction more conclusive than this would be desired or furnished. And there is no necessity for such a practice. The town may fix upon a suitable compensation in the first instance; or it may be left for such compensation to be afterwards made as the services rendered shall appear to demand; and in either case there is no inducement to elect an unsuitable person."[229]

[227] People v. Clute, 50 N. Y. 451.

[228] Gulick v. New, 14 Ind. 93; s. c. 77 Am. D. 49. See also, Hatcheson v. Tilden, 4 Harr. & McH. (Md.) 279; State v. Boal, 46 Mo. 528.

[229] Per Parker, J., in Tucker v. Aiken, 7 N. H. 113, 129, 130. But the court held that the collector was an officer de facto. Richardson, C. J., in a concurring opinion said:—"A collector thus chosen is not fit to be trusted with the power to seize the goods and arrest the bodies of citizens, especially of citizens who did not concur in the choice. And if an action of trespass had been brought against [the defendant] for taking the goods mentioned . . . he

§ 405. City council as judge of election and qualification of its members.—It is the settled doctrine in some jurisdictions that where provision is made by statute for contesting elections, the statutory proceeding is the exclusive remedy;[230] but the weight of authority is to the contrary: holding that where common councils are made the judges of the elections and qualifications of their members the common-law remedy of quo warranto is not prohibited unless the power of the council is expressly declared to be final.[231] And where there is no such office as that which a claimant assumes to fill, or there is no authority for his election thereto, the attempt by him to exercise its functions is a mere usurpation. In such a case a proceeding to contest his election is inapplicable and inappropriate, and if the public exigencies demand it he may be ousted by quo warranto; as, for instance, where a person claims to be elected a member of a council from a ward which has no legal existence,[232] or from a ward which is already fully represented.[233] In the latter case the court said: "The supreme court can not inquire whether the election was regularly conducted, for that duty belongs to the branch of the council in which the seat is claimed; but they can decide the question whether there was an office or vacancy to be filled."[234]

§ 406. Canvass and return and contest of elections.—"It is well settled that the duties of canvassing officers and boards are ministerial merely, and not judicial. Their duty is to count the votes as cast, and they have no authority, unless expressly granted, to hear evidence or to pass upon or correct alleged errors, irregularities or frauds."[235]

would probably have found it very difficult to show a legal defense:" S. C., p. 140. See also, Proprietors &c. v. Page, 6 N. H. 182.

[230] State v. Marlow, 15 Ohio St. 114; State v. Berry, 14 Ohio St. 315; State v. Berry, 47 Ohio St. 232; s. c. 24 N. E. 266; State v. O'Brien, 47 Ohio St. 464; s. c. 25 N. E. 121; 34 Am. & Eng. Corp. Cas. 361; People v. Metzker, 47 Cal. 524 (see, however, People v. Bingham, 82 Cal. 238; s. c. 22 Pac. 1039); People v. Harshaw, 60 Mich. 200; s. c. 26 N. W. 879; Commonwealth v. Leech, 44 Pa. St. 332. Cf. Commonwealth v. Allen, 70 Pa. St. 465.

[231] McVeany v. Mayor &c., 80 N. Y. 185; People v. Hall, 80 N. Y. 117; State v. Kempf, 69 Wis. 470; s. c. 34 N. W. 226; 17 Am. & Eng. Corp. Cas. 388; State v. Gates, 35 Minn. 385; s. c. 28 N. W. 927; Board &c. v. Darrow, 13 Colo. 460; s. c. 22 Pac. 784; 30 Am. & Eng. Corp. Cas. 342; People v. Londoner, 13 Colo. 303; s. c. 22 Pac. 764; State v. Kraft, 18 Or. 550; s. c. 23 Pac. 663; 30 Am. & Eng. Corp. Cas. 337.

[232] State v. O'Brien, 47 Ohio St. 464; s. c. 25 N. E. 121; 34 Am. & Eng. Corp. Cas. 361.

[233] Commonwealth v. Meeser, 44 Pa. St. 341.

[234] Commonwealth v. Meeser, 44 Pa. St. 341.

[235] Mechem Public Offices and Officers, § 208; citing People v. Van Cleve, 1 Mich. 362; s. c. 53 Am. D. 69; People v. Cicott, 16 Mich. 253,

Genuine and regular returns are to be accepted without question by the canvassers, whose function is simply to declare the apparent result of the voting, and not to investigate or pass upon the legality of the election.[236] They may be compelled to act by mandamus;[237] and when they have completed their task their powers are exhausted, and they become functi officio.[238] The common-law remedy for a defeated candidate who wishes to contest the finding and certificate of election is by an information in the nature of a quo warranto; but where the statute prescribes the mode of procedure it is generally exclusive.[239] Where an ordinance enacted pursuant to the charter provides for a contest before the council, that is the only method;[240] and the action of the council in regard to the election of its members is not reviewable on error.[241] Where the council is made the judge of the election and qualification of its members courts have no jurisdiction in the matter of contests.[242]

321; s. c. 97 Am. D. 141; Morgan v. Quackenbush, 22 Barb. (N. Y.) 72; Dalton v. State, 43 Ohio St. 652; s. c. 3 N. E. 685; Opinions of Court, 58 N. H. 621; State v. Steers, 44 Mo. 223; People v. Van Slyck, 4 Cowen (N. Y.) 297; Ex parte Heath, 3 Hill (N. Y.) 42, 47; Dishon v. Smith, 10 Iowa 212; State v. Cavers, 22 Iowa 343; Attorney-General v. Barstow, 4 Wis. 567, 749; State v. Rodman, 43 Mo. 256; State v. Harrison, 38 Mo. 540; Taylor v. Taylor, 10 Minn. 107; O'Farrell v. Colby, 2 Minn. 180; Leigh v. State, 69 Ala. 261; State v. Wilson, 24 Neb. 139; s. c. 38 N. W. 31; Maxwell v. Tolly, 26 S. C. 77; s. c. 1 S. E. 160.

[236] Paine Elections, § 603; Lewis v. Commissioners, 16 Kan. 102; s. c. 22 Am. R. 275; State v. Board &c., 17 Fla. 29; Peebles v. Commissioners, 82 N. C. 385; State v. Steers, 44 Mo. 223. "They have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated:" Attorney-General v. Barstow, 4 Wis. 567.

[237] Brown v. Commissioners &c., 38 Kan. 436; s. c. 17 Pac. 304; Lewis v. Commissioners &c., 16 Kan. 102; s. c. 22 Am. R. 275; State v. County Com'rs, 23 Kan. 264; State v. Wilson, 24 Neb. 139; s. c. 38 N. W. 31; State v. Hill, 10 Neb. 58; s. c. 4 N. W. 514; Magee v. Supervisors, 10 Cal. 376; Kisler v. Cameron, 39 Ind. 488; State v. County Judge, 7 Iowa 186; Clark v. McKenzie, 7 Bush (Ky.) 523; Attorney-General v. Board &c., 64 Mich. 607; s. c. 31 N. W. 539; Commonwealth v. Emminger, 74 Pa. St. 479; Burke v. Supervisors, 4 W. Va. 371; Alderson v. Commissioners, 31 W. Va. 633; s. c. 8 S. E. 274.

[238] State v. Randall, 35 Ohio St. 64.

[239] See Paine Elections, § 811; Mechem Public Offices and Officers, § 215 et seq.

[240] Stine v. Berry, 96 Ky. 63; s. c. 27 S. W. 809.

[241] Stearns v. Village of Wyoming, 53 Ohio St. 352; s. c. 41 N. E. 578.

[242] Foley v. Tyler, 161 Ill. 167; s. c. 43 N. E. 845; Linegar v. Rittenhouse, 94 Ill. 208. But this may not bar quo warranto mandamus: Linegar v. Rittenhouse, supra; State v. Morris, 14 Wash. 262; s. c. 44 Pac. 266.

CHAPTER XII.

CONSOLIDATION AND REORGANIZATION.

SECTION
407. How effected.
408. Power of legislature.
409. Constitutionality of laws for annexation.
410. Delegation of legislative power.
411. Illinois decisions.
412. Maryland decisions.
413. Michigan decisions.
414. Missouri and Tennessee decisions.
415. Ruling as to Baltimore City.
416. Rule as declared in Washington.
417. Powers of cities under the laws.
418. The same subject continued.
419. What may be annexed—General rule.
420. The same subject continued—Construction of statutes.
421. The same subject continued.
422. Right of taxation as to annexed lands.
423. Taxation for antecedent indebtedness.
424. Remedy of taxpayer.
425. Effect of consolidation.
426. The same subject continued.
427. Annexation proceedings — Notice.
428. Mode of voting.
429. Jurisdiction and procedure.
430. The same subject continued.
431. Reasonableness of annexation.
432. Validity of annexation.
433. Procedure to test validity.
434. The same subject continued.
435. Special acts as to reorganization.
436. Nebraska act.
437. Effect of reorganization.
438. The same subject continued.
439. The same subject continued—Decisions in California and Tennessee.
440. Validity of reorganization—Special cases.
441. Invalid reorganization.
442. Property rights passing to new corporation.
443. For what the reorganized corporation becomes liable.
444. Further scope of the foregoing doctrine.
445. What are such liabilities.
446. Remedy of creditors of the old corporation.

§ **407. How effected.**—Municipal corporations may be consolidated by act of the legislature, or may extend their boundaries by annexation of territory adjacent by proper proceedings according to the procedure named in the acts of the legislature providing a mode in which this can be accomplished, and proper tribunals for hearing on the merits, and trial of the issues involved between the parties desiring annexation and those remonstrating against it. Reorganization is accomplished by a new act of incorporation, in the form of a new charter from the legislature, or through the forms and modes provided in

general laws existent in many of the states for the incorporation, reorganization, etc., of such corporations.

§ 408. **Power of legislature.**—The power to divide large municipalities, to annul their old charters and to reorganize them, and to consolidate small ones as well as to detach portions of territory from one and annex it to another, to meet the wishes of its residents or to promote the public interests, as understood by it, is conceded to the legislature. This power is full, in the absence of constitutional restriction.[1] And the legislature by the passage of a general law prescribing modes by which adjacent territory may be annexed to municipal corporations does not surrender its power and obligation to enlarge or diminish the corporate limits of any town or city whenever the public exigency demands that it should be done.[2]

§ 409. **Constitutionality of laws for annexation.**—Questions have frequently been made upon the constitutionality of laws providing for the annexation of territory to municipal corporations; generally the laws have been upheld. The principal cases will be herein referred to. That property brought by annexation within the corporate limits of a municipal corporation will be subject to taxation to discharge its pre-existing indebtedness is no constitutional objection to the exercise of the power of compulsory annexation, this being a matter, in the absence of special constitutional restrictions, belonging wholly to the legislature to determine.[3] The supreme court of Ohio has held that

[1] Mount Pleasant v. Beckwith, 100 U. S. 514; Morgan v. Beloit, 7 Wall. 613; Thompson v. Abbott, 61 Mo. 176; Mayor &c. v. Seaber, 3 Burr. 1866; Inhabitants &c. v. Skillings, 45 Maine 133; Girard v. Philadelphia, 7 Wall. 1; s. c. 19 L. ed. 53; Story on Const., §§ 1385, 1388; Dillon Munic. Corp. 139; Cooley Const. Lim. (6th ed.) 228, and cases cited in notes; True v. Davis, 133 Ill. 522; s. c. 22 N. E. 410; 6 L. R. A. 266; Daly v. Morgan, 69 Md. 460; s. c. 16 Atl. 287.

[2] Williams v. Nashville, 89 Tenn. 487; s. c. 15 S. W. 364, where a legislative act annexing territory to Nashville was sustained as not inconsistent with the general laws in respect to annexation, and not in conflict with Const. Tenn., art. 11, § 8, cl. 1, providing that "the legislature shall have no power to suspend any general law for the benefit of individuals inconsistent with the general laws of the land." Cantwell, J., said: "By these [general] laws the power to create or abolish, enlarge or diminish, municipalities is reposed in the legislature. The power of annexation by a prescribed method was conferred on citizens and freeholders concerned; and at the same time the inherent power of annexation by special act was left in the legislature. The situation was as that of two laws, coexisting, by either of which the same result might be accomplished, and in which resort to one will not be inconsistent with or a suspension of the other."

[3] Girard v. Philadelphia, 7 Wall. 1; Elston v. Board &c., 20 Ind. 272; Edmunds v. Gookins, 20 Ind. 477; Mor-

proceedings to annex contiguous territory to the corporate limits of a town, in pursuance of their statute upon the subject, are not in contravention of the provisions of the constitution of the state.[4] The statutes of Kansas, conferring on cities of the second class power to extend their boundaries so as to include adjacent land that has been subdivided into blocks and lots, have been held not to be unconstitutional because of the provision of the constitution of Kansas which gives the power to the legislature to confer on the tribunals transacting county business such powers of local legislation and administration as it may deem expedient, as such power is not exclusive, but can be conferred on other local agencies.[5]

§ 410. Delegation of legislative power.—The laws for enlarging the limits of municipal corporations have been frequently assailed upon the ground that they amount to a delegation of legislative power and are therefore repugnant to the constitutions of the different states. The supreme court of Kansas has held the first class city act (1887), which provides that "any city of the first class may enlarge or extend its limits or area by an ordinance specifying with accuracy the new line or lines to which it is proposed to enlarge or extend such limits or area," not to be such a delegation of legislative power to the officers of a municipality as will vitiate the act.[6] The Missouri act conferring on cities power to extend their limits has been held not to be an unconstitutional delegation of power.[7] In a similar case in Nebraska it was urged that a statute providing that,

ford v. Unger, 8 Iowa 82; Burlington &c. R. Co. v. Spearman, 12 Iowa 112; Cheaney v. Hooser, 9 B. Mon. (Ky.) 330; Layton v. City of New Orleans, 12 La. An. 515; Arnoult v. City of New Orleans, 11 La. An. 54; Inhabitants &c. v. Inhabitants &c., 21 Maine 59; Opinion of Justices, 6 Cush. (Mass.) 578, 580; Warren v. Mayor &c., 2 Gray (Mass.) 84, 104; Chandler v. City of Boston, 112 Mass. 200; City of St. Louis v. Russell, 9 Mo. 503; City of St. Louis v. Allen, 13 Mo. 400; Smith v. McCarthy, 56 Pa. St. 359; Norris v. Mayor &c., 1 Swan (Tenn.) 164; Wade v. City of Richmond, 18 Gratt. (Va.) 583; 1 Dillon Munic. Corp., § 248.

[4] Powers v. County Com'rs, 8 Ohio St. 285.

[5] City of Emporia v. Smith, 42 Kan. 433; s. c. 22 Pac. 616.

[6] Hurla v. City of Kansas City 46 Kan. 738; s. c. 27 Pac. 143, an action to set aside the proceedings by which the boundaries of Kansas City, Kan., were extended to include the original cities of Kansas City, Armourdale and Wyandotte and other contiguous territory; following Callen v. City of Junction City, 43 Kan. 627; s. c. 23 Pac. 652.

[7] Kelly v. Meeks, 87 Mo. 396. See on same point, Stilz v. City of Indianapolis, 55 Ind. 515; Taylor v. City of Fort Wayne, 47 Ind. 274; People &c. v. Bennett, 29 Mich. 451; Blanchard v. Bissell, 11 Ohio St. 96; People v. Carpenter, 24 N. Y. 86; Devore's Appeal, 56 Pa. St. 163; Dillon Munic. Corp., § 183.

after a city council has voted to annex any contiguous territory, the district court shall, on petition by the city and after notice to the owners of such territory, determine the truth of the allegations of the petition, and whether all or any part of such territory would receive material benefit from annexation to the city, and whether justice and equity require such annexation, and shall enter a decree accordingly,—was an attempt to invest the court with extra-judicial powers —a legislative power. The court held that, as a condition of such annexation, the questions required to be determined by the court were entirely of a judicial character, and that it was properly invested with jurisdiction in such matters.[8]

§ 411. **Illinois decisions.**—The act of the legislature of Illinois amendatory of "An act to revise the law in relation to township organization," so far as it attempted to change the boundaries of cities and incorporated villages, was held to be in violation of the Illinois constitution, as embracing more than one subject.[9] But the

[8] City of Wahoo v. Dickinson, 23 Neb. 426; s. c. 36 N. W. 813. The court, in not giving assent to Galesburg v. Hawkinson, 75 Ill. 152, relied upon by objectors to the law, conceded "that an arbitrary annexation of territory to a city or town, where the benefits to be received by the territory annexed are not considered, can only be accomplished by legislation, either by the legislature itself or with a tribunal clothed with power for that purpose, and that a court under our [Nebraska] constitution could not be clothed with such legislative power."

[9] Dolese v. Pierce, 124 Ill. 140; s. c. 16 N. E. 218, the court saying:—"Under the title of the act of 1887, the legislature had the right to provide, as it did, for the change of township boundaries, but this right did not carry with it, as an incident, the power to change the boundaries of cities and villages, unless the change of the latter was necessary to effectuate a change of the former, or at least to promote such object. Nothing of this kind is pretended. The only thing claimed—or which can be truthfully claimed—is, that there is some resemblance, or that there are common characteristics, between townships and cities and villages. But this is equally true of all corporate bodies. While townships are regarded as municipal corporations, in the general sense of that term, yet they stand upon a plane altogether different from that occupied by cities and villages. The latter are possessed of a much higher order of corporate existence than the former, and differ from them in many essential particulars. They are, in law and in fact, as distinct from one another as any two artificial beings could be, whatever their supposed resemblance may be. This is equally so with respect to their organization and jurisdiction. In the exercise of the powers conferred upon them, they act wholly independent of each other, even where their jurisdiction extends over the same people and territory. . . . Looking at the act as a whole, it is difficult to repel the conviction that it is nothing more than a method of extending, almost indefinitely, the

annexation of two or more cities, incorporated towns and villages to each other, all of which are indebted, the indebtedness of some being in excess of the limit allowed by the constitution of Illinois, is not prohibited by the section providing that no municipal corporation shall become indebted to an amount "in the aggregate exceeding five per cent. on the taxable property therein;" and that any such corporation incurring indebtedness "shall provide for the collection of a direct tax" for the payment of the same.[10]

§ 412. **Maryland decisions.**—It was objected to a legislative act in Maryland, which provided that until the year 1900 the rate of taxation for city purposes on all taxable property within the districts to be annexed to the city of Baltimore should not exceed the existing rate in Baltimore county, that it conflicted with the article of the declaration of rights in the constitution of Maryland which declares that "every person in the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property." The supreme court of the state sustained the law over this contention, holding that the principle of equality in taxation is fully gratified by making local taxation equal and uniform as to all property within the limits of the taxing-district; and that equality and uniformity, as between different taxing-districts, whether the district be an entire city or parts of a city, is not required in local taxation.[11]

limits of the great cities of our state without consulting the people living in them, or at least but a small portion of them, and all this without a word in the title of the act to indicate such a purpose."

[10] True v. Davis, 133 Ill. 522; s. c. 22 N. E. 410; 6 L. R. A. 266, 267, where the court said:—"If, then, there is no constitutional restriction upon annexation of municipalities, and no constitutional right to exempt the property of taxpayers from burdens other than debts contracted by the municipality while the property or person was within its jurisdiction, it would seem inevitably to follow that there is no constitutional ground to object that the burden of some taxpayers will be larger in consequence of annexation than it would otherwise have been."

[11] Daly v. Morgan, 69 Md. 460, 468; s. c. 16 Atl. 287, the court saying:—"The effect of the provisions of the nineteenth section is to make the territory annexed under it a separate taxing-district, within the limits of the city as thus extended, and the legislature itself, exercising its reserved right of taxation, fixes for a limited period the rate of assessment and taxation for local purposes within such district. That it may exercise this power instead of delegating it to the local authorities is well settled in this state." The court cites State v. Mayhew, 2 Gill (Md.) 487; State v. Sterling, 20 Md. 502, and as sustaining the same construction refers to Serrill v. City of Philadelphia, 38 Pa. St. 355; Gillette v. City of Hartford, 31 Conn. 351; City of Henderson v. Lambert,

§ 413. **Michigan decisions.**—The Michigan act consolidating the two cities of Saginaw and East Saginaw, which comprised distinct representative districts, has been held not to contravene that section of the constitution of Michigan which provides for the division of the state into representative districts and enacts that such division shall remain unaltered until the return of another enumeration, which is to be had every ten years; as the act expressly provides that it shall not change in any respect the boundaries of the existing representative districts, or the manner of electing representatives, and preserves the old voting precincts intact. Also, that if the act, which authorized and made it the duty of the council of the consolidated city to issue bonds to raise money to purchase a site for and erect a city hall, and provided that this requirement should not be abrogated without the assent of a majority of the aldermen, and should be construed as in the nature of a contract between the two cities, was unconstitutional, it did not affect the validity of the rest of the act. And further, that where it appears that the consolidation of two or more cities is for the interest of the inhabitants thereof, an act of consolidation is not contrary to public policy, and does not abridge the rights of citizens.[12]

§ 414. **Missouri and Tennessee decisions.**—Kansas City, Missouri, governed by a special charter under the constitutional provision relating to cities of a population of more than one hundred thousand

8 Bush (Ky.) 607; Benoist v. City of St. Louis, 19 Mo. 179; United States v. Memphis, 97 U. S. 293.

[12] Smith v. Mayor &c., 81 Mich. 123; s. c. 45 N. W. 964; Local acts Mich., 1889, No. 455. The relator in this application for a mandamus relied upon People v. Holihan, 29 Mich. 116, to sustain his contention that the act of consolidation was unconstitutional. The court thus distinguished the case cited:—"In People v. Holihan the legislature made no provision for preserving the integrity of the representative district from which the territory was detached, but, by the very terms of the act, the boundaries of two representative districts were changed, the electors of one district transferred to another and the preservation of the district made impossible." Further, Grant, J., said:—"The power of the legislature to consolidate two municipal corporations is not questioned. In a new and growing state, cases must often arise where it is for the interest of the people that territory lying in different representative districts should, for the purpose of local self-government, be comprised in one municipality. . . . The constitutional provisions are fully satisfied when the legislative districts are preserved intact, and the territories united for municipal purposes only, preserving to the electors the necessary provisions for electing their representatives;" citing Bay Co. v. Bullock, 51 Mich. 544; s. c. 16 N. W. 896; Stone v. City of Charlestown, 114 Mass. 214; Wade v. City of Richmond, 18 Gratt. (Va.) 583; Opinion of Judges, 33 Maine 587.

inhabitants, by an ordinance attempted to annex a large adjacent territory including the city of Westport. In a case involving the validity of this annexation ordinance it was held that the ordinance was void; that it was an amendment to the charter, and the constitution of the state denied the city the right thus to extend its limits without first submitting the proposition to and procuring the consent of three-fifths of its voters, which it had failed to do.[13] The placing of property within the corporate limits of a given town is not a taking of private property, as the ownership remains unchanged; and a Tennessee statute providing for annexation of land to the city of Nashville was held not to be in conflict with the fifth amendment to the constitution of the United States, which provides that "private property shall not be taken for public use without just compensation," nor with the constitution of Tennessee, containing similar provisions;[13a] nor was said act repugnant to the provisions of the constitution of Tennessee providing that "no corporation shall be created or its powers increased or diminished by special laws," as this clause applies only to private corporations.[14]

§ 415. Ruling as to Baltimore City.—The act of Maryland extending the limits of Baltimore City by including therein parts of Baltimore County has been held not to violate the provision of the constitution of Maryland, relating to the organization of new counties and the location of county seats, which provides that the lines of a county shall not be changed without the consent of a majority of the voters of the territory sought to be taken from one and added to another county.[15] It was further held that the legislature of the state had the power to extend the limits of a city by including therein parts of the county adjoining, the city itself being a part of the county.[16] In support of this holding Robinson, J., said: "Counties are political divisions of the state, organized with a view to the general policy of the state, and the functions and powers exercised by them have reference mainly to such policy. Besides, their representation in the general assembly is fixed by the constitution, and we can understand why it was deemed proper to make some provision in regard to the organization of counties, and the annexation of part of one county to another. Towns and cities, however, are ordinarily chartered at the instance, and mainly with reference to the interest, convenience and advantage,

[13] City of Westport v. Kansas City, 103 Mo. 141; s. c. 15 S. W. 68.

[13a] So held in Williams v. Nashville, 89 Tenn. 487; s. c. 15 S. W. 364.

[14] Williams v. Nashville, 89 Tenn. 487; s. c. 15 S. W. 364.

[15] Daly v. Morgan, 69 Md. 460; s. c. 16 Atl. 287.

[16] Daly v. Morgan, 69 Md. 460; s. c. 16 Atl. 287.

of persons residing within the particular locality incorporated. They are chartered by the legislature, and their boundaries are fixed by it, and the power to extend them, whenever in its judgment the public interests require it, has been exercised by the legislature from the earliest days of the colony. No reason has been suggested why the constitution should prohibit the exercise of this power, and it would seem strange that it should provide for the annexation of parts of one county to another, and deny to the legislature the power to extend the limits of a city, by including therein parts of an adjoining county, even though such county should be a separate and independent territorial division of the state."

§ **416. Rule as declared in Washington.**—The constitution of Washington declares that municipal corporations shall not be created by special laws, but the legislature, by general laws, shall provide for their incorporation, organization, etc. This does not prevent two existing municipal corporations, or one existing corporation and an adjacent body whose incorporation was void, from being consolidated under a law authorizing a special election on the question of consolidation.[17]

§ **417. Powers of cities under the laws.**—A Florida statute gave municipal authorities the power to extend their territorial limits, and

[17] State v. City of New Whatcom, 3 Wash. 7; s. c. 27 Pac. 1020; it being held that the title, "An act providing for the organization, incorporation and government of municipal corporations," was sufficiently broad to cover provisions authorizing the consolidation of two municipal corporations and the holding of a special election on the question. Further, that the act of Washington, March 27, 1890 (acts, p. 138), providing that "two or more contiguous municipal corporations may become consolidated into one corporation after proceedings had as required in this section," and authorizing a special election to be held on the question of consolidation, applied to pre-existing corporations created by special charter, as well as those organized under general incorporation laws. Stiles, J., says of the constitutional provision, that "to encourage uniformity it provides that existing cities and towns may, without legislative compulsion, drop their special charters and take up the organization of their respective classes under such general laws as may be enacted. To do this," he says, "is in no sense to destroy or disincorporate a city or town. The territory covered is to be the same. The name is continued and the people are identical. But when two existing corporations are to be consolidated the preliminary thing to be accomplished is the disincorporation of the old, and then follows the incorporation of a new municipality, in which there must be new territory, a new name (at least as to a part of the new territory) and new people. This operation . . . may be accompanied by either a general or a special election, as the legislature may direct."

defined generally the powers and duties of municipalities. Another statute established provisional governments for cities whose charters were repealed for indebtedness, appointing commissioners with certain general powers, and declared the defunct cities to be provisional municipalities, "the boundaries of which shall be coextensive with the boundaries of such defunct cities and towns," giving to the officers thereof the same powers vested in the officers of such defunct cities under the act of 1869. It has been held that the provisional municipalities had power to extend their territorial limits.[18] Under the Indiana statutes the common council of a city, while having authority, without the consent of the owner, to annex territory, and extend its boundaries so as to include lots platted adjoining it if the plat has been acknowledged and properly recorded, can not annex land of a married woman, platted by her husband, without her authority and knowledge, even though she may have erroneously supposed it to be included in another plat before made by herself and husband and duly acknowledged and recorded.[19] The limits of a city can not be extended by vote of the electors thereof, without the consent of the voters of the territory to be annexed, under the Texas statutes.[20] The power to annex teritory is not affected by the fact that part of it is occupied as a rural homestead; nor by the fact of the territory being used for agricultural and grazing purposes.[21] And it is immaterial that it lies on several sides of a city, if the territory proposed to be annexed by one proceeding comprises but one body of land.[22]

§ 418. The same subject continued.—A city of the first class under the Kansas statute can not extend its limits so as to include unplatted territory of over five acres against the protest of the owner thereof, unless the same is circumscribed by platted territory that is taken into said city.[23] Under the Nebraska statute providing that a city of the metropolitan class may include within its corporate limits an area not to exceed twenty-five square miles, including any township

[18] Saunders v. Provisional Municipality &c., 24 Fla. 226; s. c. 4 So. 801; Act Fla., Feb. 4, 1869 (McClel. Dig. 255, § 44), as amended, Fla. laws 1879, ch. 3161, § 2.

[19] City of Indianapolis v. Patterson, 112 Ind. 344; s. c. 14 N. E. 551; Burns R. S. Ind. 1901, § 3658.

[20] Lum v. City of Bowie (Tex.), 18 S. W. 142. Sayles Civil St. (Tex.), art. 343, enacts that the limits of a city accepting titles 17 and 18 shall remain as fixed by the act of incorporation, except that they may be extended by additional territory whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of the corporation.

[21] State v. City of Waxahachie, 81 Texas 626; s. c. 17 S. W. 348.

[22] State v. City of Waxahachie, supra.

[23] Union Pac. R. Co. v. City of Kansas City, 42 Kan. 497; s. c. 22 Pac. 633.

or village organization within such limits, and that such organization shall thereupon cease and terminate, such a city can not divide the territory of a village and annex a portion thereof, but it must include the entire village.[24] Nor can it extend its limits so as to include a city of the second class.[25] The revised statutes of Texas, providing for annexation of adjacent territory to the limits of a city, have been construed, and it was held that by the words "to the extent of a half mile in width" it was not intended to confine the authority to make an annexation of territory to an area neither more nor less than half a mile wide, but it was intended to limit the area of territory which might be added to a city to half a mile wide;[26] and so long as the territories added are only a half mile wide, their outer boundaries may be extended until they intersect, though the corner thus formed is more than a half mile from the original city limits.[27]

§ 419. **What may be annexed—General rule.**—If it does not appear that the territory as a whole should be annexed, it is error to annex any part of it.[28] Such land must have great value for urban purposes.[29] Land which evidence shows represents a city's growth beyond its limits, and that it derives its value from actual or prospective use for town purposes, is a proper subject for annexation though a considerable part thereof may be used for agricultural purposes.[30] Where suburban property is platted into lots, and marked in such way as to impress on it the character of urban property as distinguished from rural use, the fact that the lots are larger than ordinary city lots will not exclude them from the operation of the laws of Indiana authorizing a city to annex suburban territory which has been platted into lots.[31]

[24] City of Omaha v. City of South Omaha, 31 Neb. 378; s. c. 47 N. W. 1113; Comp. St. Neb., ch. 12a, § 3.

[25] City of Omaha v. City of South Omaha, supra.

[26] City of East Dallas v. State, 73 Tex. 370; s. c. 11 S. W. 1030; the court deeming it reasonable to presume an intention of the legislature to restrain "a tendency on the part of thriving and ambitious cities to extend the limits of the municipality beyond the urban population and to subject to taxation persons and property who neither need nor receive any protection from the city government."

[27] State v. City of Waxahachie, 81 Tex. 626; s. c. 17 S. W. 348.

[28] Vestal v. Little Rock, 54 Ark. 321; s. c. 15 S. W. 891; 16 S. W. 291.

[29] Woodruff v. Eureka Springs, 55 Ark. 618; s. c. 19 S. W. 15; the court expressing a doubt as to whether annexation could be justified upon the ground alone that the city desired to establish, maintain and preserve water-works upon it.

[30] Vogel v. Little Rock, 55 Ark. 609; s. c. 19 S. W. 13, where an annexation was held to be right and proper under the rule established in Vestal v. Little Rock, 54 Ark. 321; s. c. 15 S. W. 891; 16 S. W. 291.

[31] Glover v. City of Terre Haute,

§ 420. The same subject continued—Construction of statutes.—Territory separated from a city by a navigable river is "contiguous" within the meaning of a statute authorizing municipal corporations to annex contiguous territory lying in the same county. Therefore, an unincorporated town on one side of an intervening river may be annexed to a city on the other side, although at the time the only means of communication are two toll-bridges and a number of small boats operated by private persons for hire.[32] The annexation of unplatted land which is touched on two sides to its entire extent by platted lands will not be set aside on appeal because it is vacant, low, flat and wet and covered with timber, since it may have been needed for town purposes, and may have needed organized local government to reclaim it.[33] As ordinarily the territory of a municipal corporation is subdivided into lots and blocks, and the residents therein do not depend on the cultivation of the soil for a livelihood, it is not the policy of the law to annex large tracts of agricultural lands to a village or city unless under the circumstances such lands should be subdivided and sold as village lots.[34] The act of Pennsylvania of April, 1876, authorizing the court of quarter sessions to annex the lands of persons resident in one township or borough to another township or borough for school purposes, does not authorize the annexation of land to a non-adjacent township.[35]

§ 421. The same subject continued.—Under the act of Pennsylvania of April 3, 1851, as amended by act of June 11, 1879,[36] providing for the annexation to a borough of "any lots, outlots or tracts of land adjacent" thereto, on application of the inhabitants of such land, annexation may be decreed if the land of all the petitioners, taken as one tract, adjoins a borough, though land not annexed may

129 Ind. 593; s. c. 29 N. E. 412. See also, Collins v. City of New Albany, 59 Ind. 396; City of Evansville v. Page, 23 Ind. 525; Edmunds v. Gookins, 24 Ind. 169.

[32] Vogel v. Little Rock, 54 Ark. 335; s. c. 15 S. W. 836.

[33] So held in Vestal v. Little Rock, 54 Ark. 321; s. c. 15 S. W. 891; 16 S. W. 291, a proceeding on the part of the city under Mansf. Dig. Ark., § 922, to annex contiguous territory; citing as to where there is an intervening river, Blanchard v. Bissell, 11 Ohio St. 96, and Ford v. Town of North Des Moines, 80 Iowa 626; s. c. 45 N. W. 1031.

[34] Village of Hartington v. Luge, 33 Neb. 623; s. c. 50 N. W. 957; the court saying that "the principal benefit in this case would be to the village by adding to the taxable property therein, but this of itself is not sufficient." They reversed the judgment of the district court as to all the lands not subdivided into lots.

[35] In re Heidler, 122 Pa. St. 653; s. c. 16 Atl. 97.

[36] Purd. Dig., p. 199, § 20 et seq.

intervene between the borough and some of the tracts.[37] A city of the first class in Kansas has the power to extend and enlarge its boundaries so as to include within it a continuous body of land lying contiguous to the prior limits of said city, when the ordinance providing for such extension is approved by the district court of the county within which such city is situated. This extension may include several tracts of land, some of which adjoin the city, and others adjoining those that do adjoin the city, so as to form one contiguous body, the annexation ordinance being approved by the district court in the manner and under the conditions and requirements of the statute.[38] Where owners have platted into blocks and lots their farming land adjacent to a city in a manner to bring it within the laws of Kansas providing for it, such subdivision may be annexed by ordinance to the city.[39] Agricultural land distant a half or three-quarters of a mile from any settlement, to which no streets or other city improvements extend, and which is not needed nor at present adaptable for city uses, should not be annexed to a city.[40]

§ 422. **Right of taxation as to annexed lands.**—Land within the limits of a city, annexed to it by legal, regular proceedings, although used only for agricultural and horticultural purposes, is subject to be taxed for ordinary city revenues.[41] It has been held that where a town incorporated, including within its boundaries unplatted lands, and was afterwards incorporated as a city of the first class with the same boundaries, and levied municipal taxes upon these unplatted lands, the then owners of the lands who had paid the taxes could not maintain an action for the recovery of those taxes.[42] The owner of

[37] Appeal of Brinton, 142 Pa. St. 511; s. c. 21 Atl. 978.

[38] So held in Hurla v. City of Kansas City, 46 Kan. 738; s. c. 27 Pac. 143.

[39] Tilford v. City of Olathe, 44 Kan. 721; s. c. 25 Pac. 223; following City of Emporia v. Smith, 42 Kan. 433; s. c. 22 Pac. 616.

[40] So held in Vestal v. Little Rock, 54 Ark. 321; s. c. 15 S. W. 891; 16 S. W. 291; citing People v. Bennett, 29 Mich. 451; s. c. 18 Am. R. 107, 111; Cheaney v. Hooser, 9 B. Mon. (Ky.) 330; City of Covington v. Southgate, 15 B. Mon. (Ky.) 491; Morford v. Unger, 8 Iowa 82; City of New Orleans v. Michoud, 10 La. An. 763; Bradshaw v. City of Omaha, 1 Neb. 16; County Com'rs v. President &c., 51 Md. 465; 2 Dillon Munic. Corp., § 795 and note; Borough of West Philadelphia, 5 W. & S. (Pa.) 281; Kelly v. Meeks, 87 Mo. 396.

[41] Hurla v. City of Kansas City, 46 Kan. 738; s. c. 27 Pac. 143; following Mendenhall v. Burton, 42 Kan. 570; s. c. 22 Pac. 558.

[42] McClay v. City of Lincoln, 32 Neb. 412; s. c. 49 N. W. 282; the court relying, to sustain their judgment, upon South Platte Land Co. v. Buffalo Co., 15 Neb. 605; s. c. 19 N. W. 711; and especially upon Blanchard v. Bissell, 11 Ohio St. 96, where the supreme court of Ohio reversed a decree of perpetual injunc-

land annexed to a city upon the finding of a court as provided for in a Nebraska statute can not claim exemption from taxation by the corporation, which is provided for in another section touching voluntary annexations.[43] But a person whose land has been annexed to a city under the first-mentioned statute, and become liable, by another section, to subdivision into lots and blocks, with streets and alleys, and subject to taxation for the city's antecedent debts, and who has taken no appeal from the judgment of annexation, can not in another action complain that the statute was unconstitutional in that it authorized the taking of private property for public use without compensation.[44]

§ 423. Taxation for antecedent indebtedness.—Property included in the extended limits of a municipality becomes, in the absence of legislation to the contrary, subject to taxation for all municipal indebtedness existing before the limits were extended.[45]

tion against the collection of municipal taxes upon lands annexed to the city of Toledo under a statute similar to the one in Nebraska; the Ohio court holding on review that "the territory so annexed was contiguous to the original city; that such annexation might be ordered without the consent and against the remonstrance of a majority of the persons residing in the annexed territory; and the lands were liable to local taxation on account of pre-existing city debts."

[43] Gottschalk v. Becher, 32 Neb. 653; s. c. 49 N. W. 715; the court thus distinguishing the two sections:—"Territory annexed voluntarily under § 95 may be so situated that it would be against equity to compel it to share prior burdens. The policy of the statute encourages annexation and municipal accretion and wealth. Territory can only be annexed under § 99 when the court shall find that 'it would receive material benefit,' or 'that justice and equity require it.' Upon such findings and resulting annexation the taxation must be uniform under the constitution, art. 9, § 6."

[44] Gottschalk v. Becher, supra.

[45] Madry v. Cox, 73 Tex. 538; s. c. 11 S. W. 541; citing Layton v. City of New Orleans, 12 La. An. 515, where it was held that where the act annexing additional territory (a city) provided that it should be subject to taxation to meet such debts only as had been created by itself, a subsequent act of the legislature might subject property to a higher rate of taxation than was necessary to meet such indebtedness, even though the tax thus raised went to discharge indebtedness of the corporation to which it was attached existing before the consolidation. Citing also, United States v. Memphis, 97 U. S. 289, where it was held that an act subsequent to one annexing territory to a city relieving the annexed territory from taxation to meet the cost of paving, the most of which was done after annexation, and outside of the annexed territory, was valid; the court saying, however, that the act of annexation, though it might have done so, not having exempted this property from the tax, "the people resident [therein] became at once entitled to a common ownership of the city's property and privileges, subject to the same duties as those resting on others. Had the [subsequent] act never been

§ 424. **Remedy of taxpayer.**—An injunction will lie to restrain taxes levied by a city on annexed territory where the city has voted to extend its limits without the consent of the electors of the territory sought to be annexed.[46] The fact that personal property of one who resides within territory annexed by ordinance of a city extending its boundaries as allowed by law has thus become subject to municipal taxation does not justify an assault on his part upon the validity of that ordinance.[47] In an action to enjoin the collection of taxes levied upon annexed suburban platted territory, the motive of a city in annexing it can not be inquired into.[48]

§ 425. **Effect of consolidation.**—The city of Philadelphia, when it covered about two miles square, was made by the will of Stephen Girard trustee to administer the trusts of that will. By various acts of the legislature culminating in the "consolidation act" of 1854, the twenty-eight municipal corporations, comprising "districts," boroughs and townships, making the residue of the county of Philadelphia, were brought into one city. A bill was filed by testator's heirs alleging, among other things, that the new city became incompetent to act as a trustee. The dismissal of this bill was affirmed by the supreme court of the United States, it being held that, by the supplement to the act incorporating the city (commonly called the "consolidation act"), the identity of the corporation was not destroyed; nor could the changes in its name, the enlargement of its area or increase in the number of its corporators affect its title to property held at the time of such change. It was further held that

passed it must be conceded that they would have been on exact equality with all other owners of property in the city, equally entitled with them to all municipal rights and privileges and equally subject to all municipal burdens and charges."

[46] Lum v. City of Bowie (Tex.), 18 S. W. 142; the court distinguishing Brennan v. City of Weatherford, 53 Tex. 330, and Graham v. City of Greenville, 67 Tex. 62; s. c. 2 S. W. 742, in that the validity of the existing corporations in those cases was disputed, and it seemed this could only be done by quo warranto proceedings. Here there is no question made as to the validity of the corporation.

[47] City of Plattsburg v. Riley, 42 Mo. App. 18.

[48] Glover v. City of Terre Haute, 129 Ind. 593; s. c. 29 N. E. 412, where it was objected that the city had been neglectful of its duty in extending water-works, street improvements and lights into this portion of the city, and that by such neglect the right to treat it as a part of the city had been forfeited, though it had maintained a school therein; and it was contended that the purpose and object of the city in making the annexation was simply to increase the revenues of the city by the taxation of this property. See also, City of Logansport v. Seybold, 59 Ind. 225; Burns Rev. Stats. Ind. 1901, §§ 3658, 3659, and notes.

the corporation, under its amended charter, had every capacity to hold and every power and authority necessary to execute the trusts of the will.[49]

§ 426. **The same subject continued.**—It has been held that the effect of the provision of the Minnesota statute consolidating the cities of St. Anthony and Minneapolis, and providing that "all ordinances and resolutions heretofore made * * * by the city council of * * * St. Anthony or by the common council of * * * Minneapolis * * * shall be and remain in force until altered, modified or repealed by the city council of said city," was not to extend the ordinances of each city over the new city, but to confine their operation within their former territorial limits until changed by the new city council.[50] A village lying within the limits of an incorporated town does not, by annexation to an adjacent city, the limits of which are coterminous with those of another town, become part of the latter town.[51]

§ 427. **Annexation proceedings—Notice.**—The rule in Michigan is that the "notice in writing" to be posted on application to detach territory from one township and attach it to another may be printed, and the names attached printed if properly authenticated.[52] The annexa-

[49] Girard v. Philadelphia, 7 Wall. 1. On p. 14, as to the power of the legislature in the premises, Grier, J., says: "The legislature may alter, modify, or even annul the franchises of a public municipal corporation, although it may not impose burdens on it without its consent;" and continues: "In this case the corporation has assented to accept the changes, assume the burdens and perform the duties imposed upon it; and it is difficult to conceive how they can have forfeited their right to the charities which the law makes it their duty to administer. The objects of the testator's charity remain the same while the city, large or small, exists; the trust is an existing and valid one, the trustee is vested by law with the estate and the fullest power and authority to execute the trust." As to change of name or enlargement of franchises not destroying the identity of a municipal corporation, see Luttrel's Case, 4 Coke 86; Haddock's Case, T. Raym. 435; s. c. 1 Vent. 355.

[50] Camp v. City of Minneapolis, 33 Minn. 461; s. c. 23 N. W. 845.

[51] City of East St. Louis v. Rhein, 139 Ill. 116; s. c. 28 N. E. 1089; the court conceding that the question of annexing the village to the city had been properly submitted to the voters of the same, but the question of detaching a part of the town (embraced in the village) and attaching it to the other town had not been submitted to the voters of the towns. The ruling was based upon People v. Brayton, 94 Ill. 341; Dolese v. Pierce, 124 Ill. 140; s. c. 16 N. E. 218; Village of Hyde Park v. City of Chicago, 124 Ill. 156; s. c. 16 N. E. 222; Donnersberger v. Prendergast, 128 Ill. 229; s. c. 21 N. E. 1; Ill. laws 1887, 300; 3 Starr & C. Anno. St. (Ill.) 522; Ill. laws 1889, 66, 361; 2 Starr & C. Anno. St. (Ill.) 2410; True v. Davis, 133 Ill. 522; s. c. 22 N. E. 410.

[52] Pelton v. Ottawa Co. Supervisors, 52 Mich. 517; s. c. 18 N. W. 245.

tion of adjacent territory under the Nebraska statute is a judicial proceeding in which the landowner is entitled to all the rights of contravention and appeal.[53] Parties appearing and contesting the proceedings for annexation of adjacent territory to a borough on application of the inhabitants, in accordance with the Pennsylvania statute, after notice, can not complain that the notice was not in the form prescribed by the act.[54] The Iowa code provides for the incorporation of a town or the annexation of territory thereto by proceedings in the district court. It was held that the code did not require that the notice of election should be made of record: it was sufficient that the record showed that notice was duly given. Also, that where all the proceedings relating to the annexation of territory to an incorporated town were regular, and the town had assumed unquestioned jurisdiction of the territory, the annexation was not invalidated by the fact that the copies of the proceedings filed in the office of the county recorder and of the secretary of state, as required, were not certified to be correct copies; especially where the proper certificates were supplied even after the sufficiency of the annexation was called in question by actions commenced.[55]

§ **428. Mode of voting.**—The revised statutes of Illinois give the county judge a discretionary power to submit the question of annexation "at either a special election called for that purpose, or at any municipal election, or at any general election," "to be holden in each of said incorporated cities, towns or villages." That such a question was voted upon in a village at its regular municipal election, and in the city at its regular municipal election held on another day, has been held not to invalidate the election.[56] The construction of the Texas statutes as to the vote on questions of annexation is that the voters are allowed to express their preferences on the subject by any method of voting which is satisfactory to themselves and to the city council; and that when it is shown by the proper affidavit that a majority have favored annexation the city council is authorized to receive the territory of their residences into the city limits.[57] A construction

[53] So held in Gottschalk v. Becher, 32 Neb. 653; s. c. 49 N. W. 715.

[54] Appeal of Brinton, 142 Pa. St. 511; s. c. 21 Atl. 978; citing Incorporation of Edgewood Borough, 130 Pa. St. 349; s. c. 18 Atl. 646.

[55] Ford v. Town of North Des Moines, 80 Iowa 626; s. c. 45 N. W. 1031.

[56] Village of North Springfield v. City of Springfield, 140 Ill. 165; s. c. 29 N. E. 849, where the annexation proceedings were sustained; the court further holding that the corporation first voting would retain its separate corporate existence until a majority of the voters of the other had declared in its favor, when the consolidation would be completed and go into effect.

[57] Graham v. City of Greenville, 67 Tex. 62; s. c. 2 S. W. 742, which was

has been placed upon the Arkansas statute providing that "when any municipal corporation shall desire to annex any contiguous territory thereto, lying in the same county, it shall be lawful for the council to submit the question to the qualified electors at least one month before the annual election," to the effect that the council was required to make an order at least a month before the annual election for the submission of the question at that election, and not to submit the question at an election held one month before the annual election.[58]

§ **429. Jurisdiction and procedure.**—By the laws in which the legislatures of the different states have provided modes for annexation of territory to the limits of municipal corporations, there is provision made for voluntary and involuntary annexation in so far as the owners of the lands are concerned. Therefore, a procedure and a jurisdiction for the trial of the issues presented has been named, and the general rule is that there must be strict compliance with the requirements of the statutes to make the annexation valid.[59] No part of a specified territory can be annexed to a city without a public notice of the hearing before the county court, as prescribed by statute, even though a majority of the property holders of such territory voluntarily appear at the hearing and consent to the annexation.[60] The supreme court of Nebraska reversed the court below in a proceeding for annexation of territory to a city of the second class and dismissed the petition, for the reason that the record did not show that a resolution

followed in State v. City of Waxahachie, 81 Tex. 626; s. c. 17 S. W. 348, where a majority of the voters signed a paper which was presented to the city council on the affidavit of three of the number, which stated, among other things, that the signers thereby "cast our [their] votes" in favor of the annexation, and described the territory.

[58] Vogel v. Little Rock, 55 Ark. 609; s. c. 19 S. W. 13.

[59] McFate's Appeal, 105 Pa. St. 323, where it was held, in a proceeding to restrain a borough from exercising jurisdiction over a section included in its enlarged limits, which enlargement was under the provisions of the act of April 1, 1834 (P. L. Pa. 163), that the petition and decree in the matter having been recorded in the recorder's office as required by the statute, the records of the court of quarter sessions as to the annexation of this land having been lost, the record from the recorder's office was evidence and could not be questioned. The presumption in such a case is that the court required strict compliance with the provisions of the act before the decree was made and recorded; this being especially true after lapse of time and proof that the persons residing thereon had after the time of such record acted as if the decree were valid.

[60] Gunter v. Fayetteville, 56 Ark. 202; s. c. 19 S. W. 577; the court saying:—"This class of cases is anomalous,—the court acts upon the territory as a whole, without the power of dividing it or of severing any part;" citing Vestal v. Little Rock, 54 Ark. 321, 323; s. c. 15 S. W. 891; 16 S. W. 291.

to annex such territory had been adopted by the city council by a two-thirds vote of all the members elect of such body, which by statute was the first step to be taken, and a condition precedent to the authority of the district court in the premises.[61]

§ 430. **The same subject continued.**—In an action to annex territory to a village it must appear from the facts stated in the petition that some portion of the territory sought to be annexed will be benefited from the annexation; and the particular facts showing such benefits with justice and equity of the relief sought must be alleged.[62] A petition for annexation in Pennsylvania must state that the land adjoins the township to which the court is asked to annex it.[63] Annexation cases, when appealed from the county court to the circuit court, should be tried de novo, and such proceedings had and such judgment rendered as though that court had original jurisdiction.[64] The circuit court may therefore permit amendments such as would be proper in the county court to the petition in such cases to exclude part of the land included in it; but such an amendment can not be made in the supreme court: the cause must be remanded to the circuit court, the amendments made there and the case tried de novo.[65] But neither the court on its own motion, nor the attorney of the corporation by leave, has the right to make such amendments except upon terms that permit remonstrance to be fairly heard upon the petition as amended.[66] No ordinance of the council of the city is necessary to empower the attorney to make such amendment.[67] An ordinance of a city submitting to the electors the question of annexation of contiguous territory, which properly describes the land, is not rendered invalid by reason of its omitting to recite that the land is contiguous.[68] Under the Pennsylvania statutes, in proceedings to

[61] City of Seward v. Conroy, 33 Neb. 430; s. c. 50 N. W. 329.

[62] Village of Hartington v. Luge, 33 Neb. 623; s. c. 50 N. W. 957.

[63] In re Heidler, 122 Pa. St. 653; s. c. 16 Atl. 97.

[64] Dodson v. Fort Smith, 33 Ark. 508, 515.

[65] Vestal v. Little Rock, 54 Ark. 321; s. c. 15 S. W. 891; 16 S. W. 291.

[66] Woodruff v. Eureka Springs, 55 Ark. 618; s. c. 19 S. W. 15, remanding the case with directions to allow amendments upon such terms.

[67] Vogel v. Little Rock, 55 Ark. 609; s. c. 19 S. W. 13; Woodruff v. Eureka Springs, 55 Ark. 618; s. c. 19 S. W. 15.

[68] Woodruff v. Eureka Springs, 55 Ark. 618; s. c. 19 S. W. 15. The court said:—"The fact, and not the recital of contiguity, authorizes the council to act; and where the fact exists there is nothing that requires that it appear by a recital upon the records of the council. The council acts in a legislative, and not in a judicial, capacity; and the rules which require that the jurisdiction of inferior courts shall appear of record are not applicable."

annex adjacent territory to a borough, no appeal on the merits lies to the supreme court, and the expediency of such annexation can not be considered.[69] The statute of Arkansas probably never intended an appeal in annexation cases, as it borrows its provisions from states where the acts prescribed to be performed by the county court are administrative purely, and where no appeal is allowed; but the right to appeal in that state is well established.[70]

§ 431. **Reasonableness of annexation.**—The supreme court of Missouri has held that the power of a city to annex by ordinance contiguous territory to its limits is restricted to a reasonable and proper exercise of such power.[71] The supreme court of Arkansas, after fully considering the various cases in different jurisdictions upon this subject, summed up their conclusions in what may be styled an excellent rule to guide courts in the determination of applications for annexation; the court said: "That city limits may reasonably and properly be extended so as to take in contiguous lands: (1) when they are platted and held for sale or use as town lots; (2) whether platted or not, if they are held to be bought on the market and sold as town property when they reach a value corresponding with the views of the owner; (3) when they furnish the abode for a densely settled community, or represent the actual growth of the town beyond its legal boundary; (4) when they are needed for any proper town purpose, as for the extension of its streets, or sewer, gas or water system, or to supply places for the abode or business of its residents, or for the extension of needed police regulation; and (5) when they are valuable by reason of their adaptability for prospective town uses; but the mere fact that their value is enhanced by reason of their nearness to the corporation would not give ground for their annexation if it did not appear that such value was enhanced on account of their adaptability to town use."[72] But an objection that an extension of the limits of a town, otherwise reasonable, is unreasonable in that it includes and subjects to taxation for municipal purposes land lying along a river and subject to overflow, will not be allowed in Iowa.[73]

§ 432. **Validity of annexation.**—Land of an owner who had not platted and made a map of the same, but which had been included

[69] Appeal of Brinton, 142 Pa. St. 511; s. c. 21 Atl. 978.

[70] Gunter v. Fayetteville, 56 Ark. 202; s. c. 19 S. W. 577; Dodson v. Mayor &c., 33 Ark. 508; Foreman v. Town of Marianna, 43 Ark. 324.

[71] Kelly v. Meeks, 87 Mo. 396.

[72] Vestal v. Little Rock, 54 Ark. 321, 323; s. c. 15 S. W. 891; 16 S. W. 291.

[73] Ford v. Town of North Des Moines, 80 Iowa 626; s. c. 45 N. W. 1031.

in a proposed addition to a city and platted by another owning the most of this addition, has been held not to have become a part of the city, although there was an ordinance of the city attempting to make the addition.[74] And the fact that plaintiff had paid a municipal tax upon his lands was held not to be a ratification on his part of the annexation to the city, nor to estop him from denying the validity of the annexation. If plaintiff had acquiesced in the annexation proceedings, stood by and without objection seen the city appropriate money or make improvements upon the faith of the validity of the proceedings by which the land was attempted to be annexed to the city, it would have bound him.[75] Where a county seat, in accordance with the laws of Kansas, by an election of citizens has been located in a town site, the officers of the county have no right to remove the courthouse and records to an addition to said town site which has been with the original town site incorporated as a city of the same name.[76]

§ **433. Procedure to test validity.**—The property of an incorporated village being in the nature of a trust fund, which the corporate authorities hold for the use of the public, any unlawful interference with it calculated to inflict irreparable injury upon the community presents a clear case for equitable relief. Therefore, a bill for injunction as a mode of testing the validity of an alleged law by which it was attempted to annex the village to the city and on which the latter relied to justify its usurpation of authority over the property of the former has been approved.[77] A writ of certiorari to quash an order of annexation of territory to a town or city, which was granted upon the petition of owners of the annexed territory, should be refused unless such owners or the persons named in the petition as authorized to act for them should be made parties. Laches in apply-

[74] Armstrong v. City of Topeka, 36 Kan. 432; s. c. 13 Pac. 843; reversing a refusal to restrain the defendant from opening a street through plaintiff's land. Cf. City of Topeka v. Gillett, 32 Kan. 431; s. c. 4 Pac. 800. See Comp. L. Kan. 1879, ch. 78, § 1.

[75] Armstrong v. City of Topeka, 36 Kan. 432; s. c. 13 Pac. 843. See also, Strosser v. City of Ft. Wayne, 100 Ind. 443; Langworthy v. City of Dubuque, 13 Iowa 86; Greencastle Tp. v. Black, 5 Ind. 557.

[76] State v. Harwi, 36 Kan. 588; s. c. 14 Pac. 158; the court saying:—"An addition to a county seat is not, strictly speaking, a part of the original town site;" citing State v. Smith, 46 Mo. 60.

[77] Village of Hyde Park v. City of Chicago, 124 Ill. 156; s. c. 16 N. E. 222; citing City of Peoria v. Johnston, 56 Ill. 45, 52; Smith v. Bangs, 15 Ill. 399; People v. Whitcomb, 55 Ill. 172; McCord v. Pike, 121 Ill. 288; s. c. 12 N. E. 259.

ing for the writ is also ground for its refusal.[78] The jurisdiction for testing the validity of a reorganization of a municipal corporation in Texas is in the district courts; and an information in the nature of a quo warranto against the officers of the assumed reorganized corporation was allowed by the district judge.[79] And passing an ordinance of annexation, taking steps preparatory to levying a tax on the new territory, and recognizing it as a ward of the city, are a sufficient indication of the purpose to exercise the corporate franchises of the city over the territory to sustain such quo warranto to determine the validity of the annexation.[80]

§ **434. The same subject continued.**—Where a town is made a part of a city by an unconstitutional act, equity may restrain the city from exercising municipal jurisdiction over it, and interfering with its property in a manner calculated to inflict on the community irreparable injury.[81] Under the code of civil procedure of California, which declares that an action may be brought by the attorney-general in the name of the people against any "person" who usurps or unlawfully exercises any franchise, and under the police code, declaring that the word "person" shall include a corporation as well as a natural person, it was held that a municipal corporation was a person within the meaning of said section; and that where such a corporation claimed the right to govern and tax the inhabitants of territory claimed to have been annexed to it, but which was not described as being in its boundaries as named in its recognized charter, the right thus claimed was a franchise in addition to and distinct from that of being a corporation, and the exercise of such right was a usurpation for which the attorney-general was authorized to bring an action.[82] If a majority of the qualified electors vote for annexation, others can not complain that the proceedings were kept secret and put through in haste.[83] One who delays eight months in filing a petition to annul

[78] Black v. Brinkley, 54 Ark. 372; s. c. 15 S. W. 1030; the court saying:—"It is fair to presume that jurisdiction has been assumed over the annexed territory with whatever of expense is necessarily incident thereto, that taxes had been assessed and paid for municipal purposes, and that the citizens residing within the annexed territory had participated in electing town officers. Great confusion would have arisen from the quashal of the order."

[79] State v. Dunson, 71 Tex. 65; s. c. 9 S. W. 103; Buford v. State, 72 Tex. 182; s. c. 10 S. W. 401.

[80] City of East Dallas v. State, 73 Tex. 370; s. c. 11 S. W. 1030.

[81] Village of Hyde Park v. City of Chicago, 124 Ill. 156; s. c. 16 N. E. 222.

[82] People v. City of Oakland, 92 Cal. 611; s. c. 28 Pac. 807.

[83] State v. City of Waxahachie, 81 Tex. 626; s. c. 17 S. W. 348.

an order of annexation to a town and offers no excuse for the delay can not question its legality.[84]

§ 435. **Special acts as to reorganization.**—The act of Washington, entitled "An act providing for the organization, classification, incorporation and government of municipal corporations," has been held sufficient to include sections relating to the enlargement and consolidation of municipal corporations. Held, also, that by implication it repealed a prior act providing for extending the corporate limits of cities by modes prescribed therein.[85] The provisions of the Utah statute entitled "An act providing for the incorporation of cities, relating to municipal government, and the mode of election of city officers," were held not applicable to an incorporated city the charter of which provided for the manner of electing its officers, existing at the time the act went into effect, until it had become reincorporated under a section which provides that when the common council call an election to determine whether the city shall be reincorporated under the act they shall give notice of the class to which the city will belong if reincorporated.[86]

§ 436. **Nebraska act.**—It has been held that the statute of Nebraska classifying cities within the state had the effect to transform a village of the proper number of inhabitants into a city of the second class—in other words, to reorganize it; and a mandamus was issued to the officers to divide the village into wards under the law and provide for an election of city officers.[86a] To make this statute effectual, it was not necessary that the corporation accept its provisions.[87] In

[84] Black v. Brinkley, 54 Ark. 372; s. c. 15 S. W. 1030.

[85] Board &c. v. Davies, 1 Wash. 290; s. c. 24 Pac. 540; reversing the court below and sustaining the board of commissioners in their refusal to act under the repealed provision and order an election as requested. By the new act change of boundaries of a municipal corporation is effected on a petition of one-fifth or more of the electors of the municipality to the council, which submits the question to the electors within and without the city, a majority of each body of electors being necessary to carry annexation, and an abstract of the vote being required to be sent to the secretary of state, and the annexed territory not being liable for the debts of the old.

[86] Watson v. Corey, 6 Utah 150; s. c. 21 Pac. 1089; affirming the quashal of a mandamus to register a voter otherwise than as a voter in the city at large.

[86a] State v. Holden, 19 Neb. 249; s. c. 27 N. W. 120.

[87] State v. Holden, 19 Neb. 249; s. c. 27 N. W. 120; the court saying that the rule which applies to private corporations in that regard has no application to municipal corporations, unless the act of incorporation is made conditional. They then quote from People v. Morris, 13 Wend. (N. Y.) 325, as follows:—"The distinction between public and

such cases the village government must, from the nature of the case, continue until superseded by the city.

§ 437. **Effect of reorganization.**—The city of San Diego is built around three sides of a bay, shaped like a horseshoe, and was originally a pueblo, whose water-line was the bay. A peninsula began near the mouth, and at one side of the bay, running nearly in the center, and more than half way up the bay, around which the water for an indefinite distance was called the "Ship's Channel." A special act reincorporated the city, with the same limits on the land side as before, but provided that the "water-front line should be the Ship's Channel," and gave the city jurisdiction of the bay and of the sea for one league from shore. A section of the act divided the peninsula into wards for voting purposes, and drew the boundary line of one ward from one point to another across the mouth of the bay; thus including, practically, the whole peninsula. Other sections restricted the elective franchise to residents of the city, and authorized the city to acquire land outside of its boundaries for municipal purposes only. It has been held that the act included the peninsula within the city limits.[88] A Texas municipality, originally a town, but afterwards reincorporated as a city by the legislature, with an extension of its boundaries, has been held liable for bonds donated by the town to a railroad company, in a proceeding to restrain the collection of a city tax for payment of these bonds, on lands in the enlarged limits. One contention was that the lands of complainants were agricultural lands removed from the benefits to be derived from municipal government, and therefore improperly brought within the limits of the city. Upon this it was held that whether this addition of territory was necessary or proper was a question addressed to the legislature, and not subject to review by the court.[89]

private corporations is strongly marked, and as to all essential purposes they correspond only in name. We speak of the erection of a town or county, and the term would be just as appropriate when applied to cities or villages. They are severally political institutions erected to be employed in the internal government of the state. There is no contract between the government and the governed, for but one party is concerned—the public; and the inhabitants upon whom the powers and privileges are conferred are mere trustees, who hold and exercise such powers for the public good. The only interest involved is the public interest, and no other is concerned in their creation, continuance, alteration or renewal." Citing also, Berlin v. Gorham, 34 N. H. 266; Warren v. Mayor &c., 2 Gray (Mass.) 84; People v. President, 9 Wend. (N. Y.) 351; 1 Dillon Munic. Corp., § 23 and notes.

[88] City of San Diego v. Granniss, 77 Cal. 511; s. c. 19 Pac. 875.

[89] Madry v. Cox, 73 Tex. 538; s. c. 11 S. W. 541; affirming the dissolu-

§ 438. The same subject continued.—A city which had been incorporated with certain boundaries, afterwards, under the general law of California allowing it in a certain prescribed mode, was reincorporated, the new charter naming the same boundaries as did its original charter. Before the adoption of this last charter in terms of law, there had been proceedings to annex territory to the city under the general law of the state providing a procedure for that purpose. It was held in a quo warranto proceeding against the city inquiring into its right to exercise municipal authority over this annexed territory that the result of the annexation proceedings was to amend its original charter as to its boundaries, and that the effect of the reincorporation later with the original boundaries was to supersede the amended as well as the original charter, and that the city had no municipal authority over the annexed district.[90] The Florida statute, entitled "An act to provide for the incorporation of cities and towns and to establish a uniform system of municipal government in this state," provided "that all the powers and privileges conferred in and by this act may be exercised by any city or town within the limits of this state heretofore incorporated; and it shall be lawful for any previously incorporated city to reorganize their municipal government under the provisions thereof by a voluntary surrender of their charters and privileges and by an organization under this act; and upon a failure on the part of any incorporated town or city to accept the provisions of this act within nine months after its approval, all the acts vesting such city or town with power are hereby repealed." This last clause was construed by Woods, J., to provide merely for a suspension of the powers of the municipal corporations failing to reorganize under the act and not for a dissolution of the corporation itself.[91]

§ 439. The same subject continued—Decisions in California and Tennessee.—A statute of California upon the organization, incorporation and government of municipal corporations provides that any

tion of the injunction temporarily granted. Cf. Norris v. City of Waco, 57 Tex. 635; New Orleans v. Clark, 95 U. S. 644; Kelly v. City of Pittsburg, 85 Pa. St. 170; Martin v. Dix, 52 Miss. 53.

[90] People v. City of Oakland, 92 Cal. 611; s. c. 28 Pac. 807.

[91] Milner's Adm'r v. City of Pensacola, 2 Woods 632, 640, where it was held that the failure of the city of Pensacola to reorganize under the act within nine months after its passage did not put an end to its corporate existence, and that its subsequent reorganization under the first six sections of the act did not create a new but was merely the rehabilitation of an old corporate body. Approved in Broughton v. Pensacola, 93 U. S. 266, 270; and cited in § 443, post.

municipal corporation organized prior to January 1, 1880, may reorganize under its provisions. The constitution of the state provides that "any city * * * may frame a charter for its own government consistent with and subject to the constitution and laws of this state," by taking certain steps therein specified for preparing and publishing a proposed charter, which shall become effective when approved by the legislature; and further, that municipal corporations "shall not be created by special laws, but the legislature, by general laws, shall provide for the incorporation, organization and classification * * * of cities and towns," etc. It has been held that since the act, although a general law, was simply permissive, a city incorporated thereunder might reincorpoate in the manner provided by the constitution, and that when the charter so framed was affirmed by the legislature it superseded the old charter.[92] In a Tennessee case, where a town had been incorporated by the legislature, and afterwards a petition had been presented for a reincorporation and change of boundaries to the county court and the prayer of the petition granted, a suit for a license fee imposed under the ordinances of the town before the action of the county court was defended on the plea that the effect of the reincorporation was a surrender of the old charter and a dissolution of the same, and therefore the last corporation had no power to collect the tax. It was held that to make the surrender by the corporators of their charter of incorporation effectual it was necessary that it be accepted by the government and a record thereof be made; hence, if the inhabitants of the town, incorporated by an act of the legislature, accepted the act of incorporation, and subsequently, in pursuance of the reincorporation act, were reincorporated, with an enlargement of the incorporated district, the charter granted by the legislature was not thereby surrendered.[93]

§ 440. Validity of reorganization—Special cases.—There is in Tennessee, in the act which prescribes a mode by which municipal corporations which have been dissolved in any manner may reorganize, a provision for a "petition of a majority of the voters within the limits of such town or city at the time of the repeal or surrender of the charter." The supreme court of the state has construed this provision and held that the words "at the time of the repeal" merely define the limits of the town, and do not qualify the word "voters."[94] And

[92] People v. Bagley, 85 Cal. 343; s. c. 24 Pac. 716, where the council elected under the charter of reincorporation was held to be the true council of the city of Stockton.

[93] Norris v. Mayor &c., 1 Swan (Tenn.) 164.

[94] Pepper v. Smith, 15 Lea (Tenn.) 551, where the reorganization of the town of Lynnville into the taxing-

it was held also that the motives of one of the petitioners for the reorganization of a town into a taxing-district could not affect the rights of the other petitioners, if they constituted a majority of the voters, nor could the motives of any of the petitioners be inquired into under a bill filed to contest the legality of the reorganization, nor his character be impeached.[95] A reorganization in 1887 of the territory of a town incorporated in 1859, under the act of January 27, 1858, in Texas, was held to be void, as, in the opinion of the court, the laws in force since the adoption of the revised statutes do not provide for the reorganization of any municipal corporation by the acceptance of the general law in lieu of a former charter, whereby the former corporation is practically dissolved in any manner other than that prescribed in article 340 of the revised statutes. Any effort on the part of the inhabitants of territory within an existing corporation otherwise than as so provided was held to be without authority and of no legal effect. So, also, as to any effort to increase the boundaries of such corporation otherwise than as provided by existing statutes.[96]

§ **441. Invalid reorganization.**—An invalid reorganization of an incorporated town as a city can not effect its corporate existence.[97] A reincorporation of a town by an adoption of an article in the Texas statute[98] by vote of electors was held to be void; it could adopt that article only in the manner prescribed therein "by a two-thirds vote of the city council."[99] The organization of a town as a municipal corporation under the act of Tennessee of 1869-70 superseded its organization under the code. A repeal of that act, accepted and acquiesced in, did not restore its old organization, but left it without

district of Lynnville was held to be valid and in compliance with the law.

[95] Pepper v. Smith, 15 Lea (Tenn.) 551.

[96] State v. Dunson, 71 Tex. 65; s. c. 9 S. W. 103; the court saying:—"The act of March 15, 1875, incorporated in the revised statutes, changed the method by which a town or city already incorporated might surrender its corporate existence and reincorporate under that general law (January 27, 1858). The revised statutes, art. 340, provide that this may be done by a two-thirds vote of the city council of such city. A further change was made . . . that in the reorganization of a city the boundaries, as determined by the former charter, remain, unless additional territory be added at the desire of a majority of the qualified voters residing within the territory to be added: Rev. Stats., arts. 343, 503." In Buford v. State, 72 Tex. 182; s. c. 10 S. W. 401, the reincorporation of the town of Henderson was held void upon this construction of the revised statutes.

[97] Laird v. City of De Soto, 22 Fed. 421.

[98] Sayles Civil Stat. Tex., tit. 17, ch. 1, art. 340.

[99] Lum v. City of Bowie (Tex.), 18 S. W. 142.

municipal organization.[100] It was held that a city having a special charter did not by force of the act of Washington entitled "An act providing for the organization, classification, incorporation and government of municipal corporations," become reincorporated thereunder.[101] A town in Texas was reincorporated in 1859, and its corporate organization kept up at intervals till 1882. In 1887 steps were taken as for the original incorporation of a city or town, with boundaries larger than those of the original town. It was held that the corporation created in 1859 could not be presumed to be dissolved by the failure to elect officers; and that as the statute provides the only manner in which a city or town may surrender its corporate existence and reincorporate under the general law, and that the boundaries of such a city shall remain as they were fixed by the former charter, unless additional territory be afterward annexed in the manner therein prescribed, the proceedings had in 1887 did not create a corporation, nor dissolve the one previously existing.[102]

§ **442. Property rights passing to new corporation.**—Where a municipal corporation is legislated out of existence and its territory annexed to other corporations, the latter, unless the legislature otherwise provides, become entitled to all its property and immunities, and severally liable for a proportionate share of all its subsisting legal debts, and vested with its power to raise revenue wherewith to pay them by levying taxes upon the property transferred and the persons residing therein.[103] So, too, when a municipal corporation with fixed boundaries is divided by law and a new corporation is created by the legislature for the same general purposes but with new boundaries embracing less territory, but containing substantially the same population, the great mass of the taxable property and the corporate property of the old corporation, which passes without consideration and for the same uses, the debts of the old corporation fall upon the new corporation as the legal successor, and powers of taxation to pay them, which it had at the time of their creation and which entered into

[100] So held in Ruohs v. Athens, 91 Tenn. 20; s. c. 18 S. W. 400, in which the court further ruled that as an attempted reorganization afterwards was void for an irregularity the town could plead the invalidity of its organization in defense of a suit brought on bonds. Burke v. State, 5 Lea (Tenn.) 349, was followed in this case.

[101] So held in Rohde v. Seavey, 4 Wash. 91; s. c. 29 Pac. 768, where it was determined that such a city, not having been reincorporated as provided for in the act, could not be embraced within the classifications of such act.

[102] State v. Dunson, 71 Tex. 65; s. c. 9 S. W. 103.

[103] Mount Pleasant v. Beckwith, 100 U. S. 514.

the contracts, also survive and pass into the new corporation.[104] The right to a liquor tax levied but not collected by a town previous to its annexation to a city is not transferred by this annexation to the latter.[105]

§ 443. For what the reorganized corporation becomes liable.—Where an incorporated town is reorganized as a city, the latter becomes liable for the debts of the former.[106] In holding the city of Pensacola liable for the bonds issued by the former city of Pensacola, which it was contended had been dissolved by failure of the city to reorganize within nine months after the approval of an act providing for a uniform system of municipal government in the State of Florida, Woods, J., concluded that the present city was the same corporate body as that by which the bonds were issued; reorganized and clothed with a new charter and with new powers and privileges, it is true, but still the same municipal corporation.[107] Where a town has been vacated by a county board exercising legislative power in the mode prescribed by the law of the state, and its territory in part annexed to another, the latter becomes liable for the debts of the former; as, for instance, for a sum due to an attorney for prosecuting an action for the former town against the latter, the action being dismissed on the annexation.[108] And it is not within the power of a legislature, by the repeal

[104] Mobile v. Watson, 116 U. S. 289; s. c. 6 S. Ct. 398; holding the port of Mobile liable for bonds issued by the city of Mobile in aid of a railroad, and in the contract connected therewith the dissolved corporation had provided for the payment of the same by levy of a certain tax.

[105] So held in Springwells Tp. v. Wayne Co. Treasurer, 58 Mich. 240; s. c. 25 N. W. 329; the court saying: —"Detaching part of a township does not affect the ownership of anything but lands. All debts or rights incorporeal continue to be owned by the township unless provision is made by law to the contrary."

[106] Laird v. City of De Soto, 22 Fed. 421. Miller, J., says:—"If the city organization of 1877 was absolutely void, the town of De Soto remained, and the city organization now sued, which was created by order of the county court after the dissolution of the first city organization by the decree in quo warranto, is the legitimate successor of the town of De Soto which issued the bonds, being composed of the same trustees and the same people, and is only a change in the name of the corporation and in its mode of government;" citing Broughton v. Pensacola, 93 U. S. 266.

[107] Milner's Adm'r v. City of Pensacola, 2 Woods 632, 642, cited in § 438, ante.

[108] Knight v. Town of Ashland, 61 Wis. 233; s. c. 21 N. W. 65; the court saying:—"The general power of the legislature to apportion the property and the liabilities of a vacated town among the towns to which its territory is attached is recognized by this court in Town of Depere v. Town of Bellevue, 31 Wis. 120, 125; Goodhue v. Town of Beloit, 21 Wis. 636; Supervisors &c. v. O'Malley, 47 Wis. 332; s. c. 2 N. W. 632; Town of Butternut v. O'Malley, 50 Wis. 333;

of the charter of a municipal corporation, to invade the rights of its creditors and cancel its indebtedness; such legislation impairs the obligation of contracts and is unconstitutional.[109]

§ **444. Further scope of the foregoing doctrine.**—A change in the charter of a municipal corporation, in whole or in part, by an amendment of its provisions, or the substitution of a new charter in place of the old one, embracing substantially the same corporators and the same territory, will not be deemed, in the absence of express legislative declaration otherwise, to affect the identity of the corporation, or to relieve it from its previous liabilities, although different powers are possessed under the amended or new charter, and different officers administer its affairs.[110]

§ **445. What are such liabilities.**—The word "debts" in the Texas statute repealing the charter of East Dallas and annexing its territory to the city of Dallas, placing the liability for the debts of the former upon the latter, has been held to include a liability for damages resulting from the tortious acts of the municipal officers in removing a private dwelling and tearing down a fence preparatory to taking the land for a public street.[111] A law imposing political obli-

s. c. 7 N. W. 248." In the case of Supervisors &c., v. O'Malley, supra, it was held that the county board of supervisors had all the powers of the legislature in vacating towns.

[109] Milner's Adm'r v. City of Pensacola, 2 Woods 632, 642; citing 1 Dillon Munic. Corp., § 114, where are cited in support of this view, Cooley Const. Lim. 290, 292; Curran v. Arkansas, 15 How. 304; Thompson v. Lee Co., 3 Wall. 327; Havemeyer v. Iowa Co., 3 Wall. 294; 2 Kent Com. 307, n.; Board &c. v. Cox, 6 Ind. 403; Coulter v. Robertson, 24 Miss. 278; State v. Common Council &c., 15 Wis. 30; Blake v. Portsmouth &c. R. Co., 39 N. H. 435.

[110] Broughton v. Pensacola, 93 U. S. 266. Leading up to this conclusion, on p. 269 Field, J., says:—"Although a municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the state for the convenient administration of government, yet, when authorized to take stock in a railroad company and issue its obligations in payment of the stock, it is to that extent to be deemed a private corporation, and its obligations are secured by all the guaranties which protect the engagements of private individuals. The inhibition of the constitution, which preserves against the interference of a state the sacredness of contracts, applies to the liabilities of municipal corporations created by its permission; and although the repeal or modification of the charter of a corporation of that kind is not within the inhibition, yet it will not be admitted, where its legislation is susceptible of another construction, that the state has in this way sanctioned an evasion of or escape from liabilities, the creation of which is authorized."

[111] Barber v. City of East Dallas, 83 Tex. 147; s. c. 18 S. W. 438; the court saying:—"Although in the na-

gations—as, for instance, the issuing of bonds for the purpose of building a city hall—upon a municipal corporation, which by a subsequent act of the legislature was specially abolished and the same territory reincorporated as a city, with the same name even, is not effectual to impose the same obligations upon the latter.[112] The city of New Orleans has been held liable and burdened with the contract obligations entered into by two cities with a gas company prior to an act consolidating them with the city of New Orleans.[113] An attorney agreed to prosecute an action of the town of L. against the town of A. for a certain sum, which, also, he was to have if the action should be discontinued without his consent. Pending the action L. was vacated and A. made its successor, and A. obtained the discontinuance of the action. It was held that A. was liable to the attorney for the sum agreed upon.[114] A new town set off from another is not released or discharged from the payment of a debt created prior to the separation.[115] Where an act consolidating two cities provides that the corporation as consolidated shall pay all the lawful debts of the annexed corporation, the consolidated corporation was held liable for damages to land caused by the wrongful digging of a ditch by the annexed corporation.[116] Under a statute of New Jersey providing a mode of equitable adjustment and apportionment of the indebtedness and assets when a portion of a township has been set off, it was held that a borough set off from a township was not liable for the previously contracted debts of the township.[117]

§ 446. **Remedy of creditors of the old corporation.**—The remedy of creditors of an extinguished municipal corporation is in equity

ture of a tort, the liability is a fixed one, growing out of the exercise of power conferred upon the defendant by law, and although the law prescribed the manner in which property may be condemned and taken for the use of a street."

[112] So held in Carey v. City of Duluth, 38 Minn. 218; s. c. 36 N. W. 459; the court construing the language of the act charging the reincorporated city with responsibility for the "legal debts, obligations and liabilities" of the former city to be "indicative merely of a purpose to transfer to it the pecuniary or legal responsibility of the extinguished municipality in favor of those whose rights, springing from contract or tort, ought not to be cut off, rather than of a purpose to require the new municipality, whose charter was apparently complete in itself, to perform whatever political duties had been by law specifically imposed upon the former city."

[113] State v. City of New Orleans, 41 La. An. 91; s. c. 5 So. 262.

[114] Knight v. Town of Ashland, 65 Wis. 166; s. c. 26 N. W. 565.

[115] Canosia Tp. v. Grand Lake Tp., 80 Minn. 357; s. c. 83 N. W. 346.

[116] City of Dallas v. Beeman, 23 Tex. Civ. App. 315; s. c. 55 S. W. 762.

[117] Inhabitants &c. v. Hackensack Imp. Com., 60 N. J. Eq. 229; s. c. 46 Atl. 782.

against the corporation succeeding to its property and powers.[118] A reorganized municipal corporation, legal successor to one dissolved, is a proper party-defendant in a suit to recover for claims and obligations entered into by the dissolved corporation, and a judgment against the new corporation settles all questions of its liability for the debts of the old.[119] The United States circuit court, on a judgment obtained by a bondholder against the reorganized corporation on such a debt of the dissolved one, ordered a peremptory mandamus to be issued to the officers of the former to levy a tax to raise money for the payment of this judgment. This was affirmed by the supreme court of the United States.[120] Where judgment is recovered against a municipal corporation which is subsequently dissolved and another created in its place, scire facias is the proper proceeding to revive the judgment against its successor. Such a case is distinguishable from scire facias against an heir to subject him to liability for his ancestor's debt: the heir is not liable for the debt, but only the property in his hands; while the successor of the municipal corporation is liable, be-

[118] Mount Pleasant v. Beckwith, 100 U. S. 514.

[119] United States v. Port of Mobile, 12 Fed. 768. See also, Dousman v. President &c., 1 Pin. (Wis.) 81.

[120] Mobile v. Watson, 116 U. S. 289; s. c. 6 S. Ct. 298, where it was contended that as the act chartering the new corporation made simply a provision for an adjustment, through commissioners to be appointed for the purpose, of the claims against the dissolved corporation, there was no power given to the reorganized corporation to levy such a tax. The court's reason for such ruling was as follows:—"The remedies for the enforcement of such obligations assumed by a municipal corporation, which existed when the contract was made, must be left unimpaired by the legislature, or if they are changed a substantial equivalent must be provided. Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing powers and leaves no adequate means for the payment of the bonds is forbidden by the constitution of the United States and is null and void: Citing Von Hoffman v. City of Quincy, 4 Wall. 535; Edwards v. Kearzey, 96 U. S. 595; Ralls County Court v. United States, 105 U. S. 733; Louisiana v. Pilsbury, 105 U. S. 278; Louisiana v. Mayor &c., 109 U. S. 285; s. c. 3 S. Ct. 211. Cf. and as supporting the doctrine: Commissioners &c. v. Rather, 48 Ala. 433; Edwards v. Williamson, 70 Ala. 145; Slaughter v. Mobile Co., 73 Ala. 134. See also, Wolff v. New Orleans, 103 U. S. 358, 368. Cf. Amy v. Selma, 77 Ala. 103, where it was held that the Alabama act of February 17, 1883, incorporating the same territory and inhabitants under another name, made the new corporation the successor of the dissolved one, and bound it to the payment of the debts and to the satisfaction of the liabilities of the dissolved corporation, and made it a necessary party to a bill filed by the commissioners appointed under the act of 1882.

cause it is the same debtor under a different name, and scire facias lies against such successor although equity is administering the assets of the former municipality.[121]

[121] Grantland v. City of Memphis, 12 Fed. 287.

CHAPTER XIII.

PARTITION AND DISSOLUTION.

(a) Partition.

Section

447. Partition—General rule.
448. Validity of partition.
449. Rules as to division of counties and towns.
450. Procedure for division not applicable in vacating a town.
451. Indiana rules.
452. Michigan rules.
453. Rules as to severing territory.
454. Pennsylvania rule.
455. Constitutionality—Wisconsin.
456. Rulings as to constitution of Wisconsin on division of counties.
457. The same subject continued—Uniformity of system of government.
458. Title of act.
459. Florida decisions on constitutionality of acts.
460. Kansas decisions.
461. How partition affects officers.
462. Where unorganized territory has been attached to a county.
463. Settlement of inhabitants.
464. Territory severed from an old to form a new corporation is a part of the old until the new is fully organized.
465. Some Wisconsin acts construed.
466. Provisions of act as to county sites.
467. Apportionment of liabilities.
468. Rules as to property and liabilities.
469. The same subject continued.
470. A Wisconsin case on property rights.

Section

471. Rules as to apportionment of liabilities and remedies.
472. Rules in North Carolina as to settlement between new and old counties.
473. Rules for adjustment of liabilities.
474. Liabilities which fall upon the portion severed.
475. Defenses to claims growing out of partition.
476. Enforcement of obligations of old and new.
477. Miscellaneous.

(b) Dissolution.

478. Dissolution — How effected in general.
479. The same subject continued.
480. Surrender of charter.
481. The same subject continued.
482. Florida decisions on constitutionality of acts to dissolve.
483. Vacated towns.
484. This was no dissolution.
485. Effect of dissolution as to liabilities and funds in hand.
486. Effect of dissolution upon liabilities.
487. What does not affect liabilities and remedies.
488. Repealing charters.
489. The same subject continued.
490. Receiver for a city.
491. The same subject continued.
492. Where such a receiver was appointed.

(a) Partition.

§ 447. **Partition—General rule.**—The power to divide counties and form new ones of portions of the old, to divide towns, and to sever territory from one municipal corporation and attach it to another, is not questioned. This power is lodged in the legislatures of the states; but its exercise over corporations different from counties is in some cases delegated by general law to the ruling bodies of the counties of the state. It has been held in New York that a county may be divided by the legislature into two or more counties by a mere majority vote, it not being necessary that a bill for such purpose should receive the assent of two-thirds of all the members.[1] Where, since the passage of an act organizing a township, the supervisors of the county out of which the township was formed have undertaken to form two other townships out of that organized by the legislature, without seeking a bill, and on a petition not appearing on its face to be signed by any freeholders of the township organized by the legislature, their action can not stand in the way of the legislative organization, or interfere with the rights of an officer duly elected for such township.[2] The word "town" as used in the constitution of Wisconsin denotes a civil division composed of contiguous territory; and under the power granted to county boards by the statute, such a board can not make a valid order changing the boundaries of a town so that it shall consist of two separate and detached tracts of land.[3] Where a severance has been allowed by order of court on an application, it may be held erroneous if, under the circumstances, justice and equity did not require it.[4] Provisions of a previous statute relating to severance of territory have been held applicable alike to cities and towns organized under the general incorporation law and those previously organized under special charters.[5] Such statutory provisions are applicable to territory within the city or town whether it is or is not laid out into lots and blocks. If so laid out, the severance would, it seems, operate as an extinguishment of the rights of the corporation in the streets and alleys of such portion.[6] Where the application for division of a township is properly

[1] People v. Morrell, 21 Wend. (N. Y.) 563.

[2] So held in Attorney-General v. Rice, 64 Mich. 385; s. c. 31 N. W. 203.

[3] Chicago &c. R. Co. v. Town of Oconto, 50 Wis. 189; s. c. 6 N. W. 607.

[4] Mosier v. City of Des Moines, 31 Iowa 174.

[5] Whiting v. City of Mt. Pleasant, 11 Iowa 482.

[6] McKean v. City of Mt. Vernon, 51 Iowa 306; s. c. 1 N. W. 617; Way v. Town of Center Point, 51 Iowa 708; s. c. 1 N. W. 692. Where the statutes provide a method of detaching territory embraced in a village the trustees have no discretion where the preliminary steps have been taken, in accordance with the statute: Young v. Carey, 184 Ill. 613; s. c. 56 N. E. 960.

made, the board of supervisors has no discretion, and may be compelled by mandamus to make such division.[7] A new township formed out of an old one does not become independent until its complete organization—when the officers elected for it enter upon the discharge of their duties.[8] In Iowa, upon the formation of a new township, no election except that upon the question of formation of such township can be held until after the 1st of January following; special elections contemplated or authorized by law to be held prior to that time must be held in the old or original township.[9]

§ 448. **Validity of partition.**—The statute of New York does not, it seems, require that the published copy of notice of the application of twelve freeholders for the erection of a new town shall contain the names of such applicants: it is sufficient that the notice posted should be thus described. And an affidavit that a notice was left with another person to be posted up, "which was done," has been construed as a positive averment of the posting.[10] Where, in the partition of a town, and forming a new one from a portion thereof, the dividing line only was described in the act of the board of supervisors, it has been held that the uncertainty was cured by the reference in such act to the petition, etc., upon which it was founded, and from which it appeared that the new town was to lie south of the line of division, and by proof aliunde that the place named in the act for holding the first town meeting was south of such line.[11] The question whether a town has been legally erected may be tested in an action in the nature of quo warranto against one claiming to exercise the office of supervisor of such town.[12] Where an act of supervisors or other officers authorized to divide municipal corporations is attacked for irregularities or otherwise, the burden of disproving a compliance with the conditions imposed by law as requisite to the exercise of the power is upon those who would impeach it; the act of the officers is one of a legislative character, in favor of the regularity of which all presumptions are to be indulged.[13] The supreme court of Michigan has held that the legality of the division of a township, consisting of two governmental towns, can not be raised in an action attacking the validity of a tax, on the ground that the assessment rolls for the old township did not contain the lands included in the new one.[14]

[7] Henry v. Taylor, 57 Iowa 72; s. c. 10 N. W. 308.

[8] Lamb v. Burlington &c. R. Co., 39 Iowa 333.

[9] Williams v. Poor, 65 Iowa 410; s. c. 21 N. W. 753.

[10] People v. Carpenter, 24 N. Y. 86.

[11] People v. Carpenter, supra.

[12] People v. Carpenter, supra.

[13] People v. Carpenter, supra.

[14] Mills v. Richland Tp., 72 Mich. 100; s. c. 40 N. W. 183.

§ 449. **Rules as to division of counties and towns.**—An act to create two counties, etc., which divided the territory of two existing counties so that a large part of the one was cut off and attached to the other to form one of these new counties, and the other new county was formed of the balance left of the first, violated that provision of the constitution of Idaho which declares that "no county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division."[15] Where the constitution of a state provides that no county shall be formed of an area less than a fixed number of square miles, a county board can not lawfully submit a proposition to divide a county where the new counties would be less in area than the constitutional limit.[16] A county board can not lawfully submit to be voted upon at the same election two propositions to erect from a county two new counties when the territory described in one proposition embraces a part of that included in another, under a provision in a statute that on a proper petition the county board shall submit to the electors of the county affected the question of the division of the county.[17] An act of Tennessee abolishing the county of James and restoring its territory to the counties of Hamilton and Bradley, from which it was formed, was held to be void under that article of the constitution of Tennessee providing for the formation of new counties with the consent of the voters of the territory taken to form such counties, and particularly prescribing how such new counties may be established, but giving no authority to abolish an old county entirely.[18] Where one town is set off by the legislature from the territory of another town, the boundary between them being a stream of water, the center of the stream is the dividing line between the two.[19] Commissioners in proceedings to alter township lines are not restricted to the approval or rejection of the line established by the report of the first commissioners who viewed. Nor are reviewers in such proceedings required to go within any particular distance of the proposed line, if they go near enough to get a view that will enable them to form an intelligent opinion.[20] The constitution of Nebraska, declaring that "no county shall be divided, or have any part stricken therefrom, without first submitting the question to a vote of the people of the

[15] People v. George, 2 Idaho 813; s. c. 26 Pac. 983.

[16] State v. Armstrong, 30 Neb. 493; s. c. 46 N. W. 618.

[17] State v. Armstrong, supra.

[18] James Co. v. Hamilton Co., 89 Tenn. 237; s. c. 14 S. W. 601.

[19] Flynn v. City of Boston, 153 Mass. 372; s. c. 26 N. E. 868.

[20] Exeter &c. Township Line, 8 Pa. Co. Ct. 524.

county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same," is a restriction upon the powers of the legislature to the extent named, but does not prohibit a law requiring a three-fifths vote.[21] The auditor-general of Michigan apportioned the state taxes for 1891 to a county from which a part had been taken by an act passed May 21, 1891, but not to go into effect until October 2, 1891, and with parts of other counties formed into a new county, without reference to the new county, and applied for a writ of mandamus to compel the board of supervisors of that county to levy the tax. It was held that the writ should be denied; that the auditor-general should separate the legalized valuation, and apportion the taxes to the old county in proportion to the valuation of the property therein, after deducting the valuation of the townships or parts of townships taken from that county to form the new county.[22] An act detaching certain territory from a county and annexing it to an adjoining one, which brought the line between the counties within less than six miles of the court-house of the county from which the territory was detached, was held to be void as repugnant to the constitution of Tennessee, which provides that the line of any new county formed shall not approach the court-house of an old county from which it may be taken nearer than eleven miles.[23] No appeal lies from a statutory proceeding for the division of a township unless expressly allowed by statute.[24]

§ 450. Procedure for division not applicable in vacating a town.— The Wisconsin statutes prescribe a procedure for division of towns and for vacating towns. It has been held that the only limitation upon the powers of the county board in setting off, organizing, vacating and changing the boundaries of towns is contained in the statute that a town shall not be vacated unless a majority of the members elected to seats therein shall so desire.[25]

[21] State v. Nelson, 34 Neb. 162; s. c. 51 N. W. 648; State v. Painter, 34 Neb. 173; s. c. 51 N. W. 652.

[22] Auditor-General v. Board &c., 89 Mich. 552; s. c. 51 N. W. 483.

[23] Union Co. v. Knox Co., 90 Tenn. 541; s. c. 18 S. W. 254.

[24] In re Division of Valley Tp., 146 Pa. St. 111; s. c. 23 Atl. 222.

[25] State v. Board &c., 61 Wis. 278; s. c. 21 N. W. 55, in which it was contended that the provisions of the section relating to the division of towns applied to the case, and that a failure to take the steps provided for in this section made the action of the county board void. The court held this section not applicable in proceedings to vacate a town. The court say that the ordinance can not be said "correctly [to be] one dividing the town of Dexter. It vacates that town absolutely, and then proceeds to attach the territory thereby left unorganized to certain organized towns adjacent thereto. It was the clear duty of the board to extend organized town government

§ **451. Indiana rules.**—The legislature may, on division of a county, divide property of the same.[26] It has been held in Indiana that the legislature may delegate the power to organize new counties; further, that their act of March, 1857, upon this subject was not in conflict with their constitution; that no legislative power was delegated by that act.[27] Provisions for the establishment of boundaries of existing counties and provisions for formation of new counties are matters which may be properly embraced in the same act of the legislature.[28] Under the act of March, 1857, a single county containing the requisite area might be divided by its own board of commissioners, acting through a single committee of freeholders.[29] By the establishment of boundaries of a new county, under the provisions of the supplementary act of March 5, 1859, it becomes simply an organized political body; the jurisdiction of courts is not affected thereby; in such case the courts of the old county continue to hold jurisdiction in actions concerning real estate, situate within the boundaries of the new county, until the time is fixed by the judge for holding the first term in the new county.[30] Change of boundaries of two adjoining counties by boards of commissioners, subsequent to action of the assessors of townships of the county from which a portion was detached, in making their enlistments and returning their list of taxation to the auditor of the county, and prior to the day when the rate of taxation was fixed, will not affect the right of the county to collect against persons residing in the detached territory; but even if the county from which such portion was detached were in the wrong in attempting to collect such taxes, the one having a part of its territory attached to it would not be a proper party to enjoin it: a taxpayer should move in such matters.[31] A bill of revivor of a bill in chancery filed in an old

over such territory. Under existing laws it is only through the machinery of town government that property outside of municipalities can be assessed for taxation, or taxed, or that electors not residing in municipalities can exercise the right of suffrage. [There is] no good reason why provision may not be made in the same ordinance for vacating a town and for extending the town government over the unorganized territory which constituted the vacated town, as well as to make two ordinances to accomplish the same result. In either case the provisions for attaching the territory to organized towns are not operative—in the nature of things can not be—until the ordinance vacating the town has taken effect. See State v. Timme, 54 Wis. 318; s. c. 11 N. W. 785. Hence, when that part of the ordinance which attached the territory once situated in the town of Dexter to other towns became operative, there was no town of Dexter to divide."

[26] State v. Votaw, 8 Blackf. (Ind.) 2; Lucas v. Board &c., 44 Ind. 524.

[27] Board &c. v. Spitler, 13 Ind. 235; Haggard v. Hawkins, 14 Ind. 299.

[28] Haggard v. Hawkins, 14 Ind. 299.

[29] Haggard v. Hawkins, 14 Ind. 299.

[30] Milk v. Kent, 60 Ind. 226.

[31] Board &c. v. Board &c., 32 Ind. 234.

county respecting land situate in the old county at the time of decree should be filed in the same county, notwithstanding by a change of boundaries the land was afterwards in another county; for this latter county had no jurisdiction of the cause, and a bill of revivor merely continues the original suit.[32] And an action to foreclose a mortgage when brought in the proper county can not be defeated by a subsequent division of the county, as the division of the county by commissioners would not be complete till a court was so organized in the new county as to enable suits to be instituted.[33] A division of a county by commissioners in such a case is a matter of proof.[34] It was not the intention of the legislature to exclude other evidence as to whether petitioners for formation of new counties formed a majority of the voters, in providing, as a mode of ascertaining that fact, a reference to the number of votes cast at the last preceding congressional election.[35]

§ **452. Michigan rules.**—An act to organize a new county out of parts of three old counties provided for an election upon the formation of the new county by the electors of the three counties "at the township meetings in said county," etc. The new county organized under this act with the assent of the voters of the parts of those counties embraced within its boundaries was held to be properly organized: the act being construed not to require that the question be submitted to the voters of the whole of those counties from which it was organized, but only to those within the new county.[36] The constitutional prohibition in Michigan against reducing any county to less than sixteen townships is meant to prevent its unreasonable reduction in size and to preclude the division of surveyed townships, if convenience requires, in organizing new counties. It was not violated where a county was left with fifteen whole and two half townships.[37] It is competent for the legislature in creating a new county out of the territory taken from two old ones to enact that suits pending on a certain date in any court in either of the old counties shall be prosecuted to final judgment in the county where commenced.[38]

[32] Arnold v. Styles, 2 Blackf. (Ind.) 391.

[33] Buckinghouse v. Gregg, 19 Ind. 401.

[34] Buckinghouse v. Gregg, supra.

[35] Allen v. Hostetter, 16 Ind. 15.

[36] People v. Burns, 5 Mich. 114.

[37] Bay Co. v. Bullock, 51 Mich. 544; s. c. 16 N. W. 896. Acts creating new county and new township held illegal in People v. Maynard, 15 Mich. 463. See People v. Board &c., 41 Mich. 647; s. c. 2 N. W. 904, as to illegal division of township.

[38] So held in an ejectment case brought in the new county: Spalding v. Kelly, 66 Mich. 693; s. c. 33 N. W. 803.

§ 453. **Rules as to severing territory.**—An act for the creation of a new county out of portions of two old ones provided "that a portion of K. county and a portion of S. county, hereby proposed to be segregated, shall not be cut off unless the question of segregation shall be first submitted to the vote of the people of K. county, and also to the voters of that part of range 69 proposed to be detached from S. county, at a special election called for that purpose. * * * In case a majority of the legal voters of said K. county, and of said range 69, voting, shall vote in favor of said segregation, then this act shall be in full force and effect." It was held that a majority of the aggregate vote cast in both counties was insufficient, but a majority of each was necessary to the creation of the proposed county.[39] Lands within the limits of a city, used wholly for agricultural purposes, not benefited by their connection with the city and not needed for city purposes, will be severed on petition of the owners; and if not liable for municipal taxes the severance can not be conditioned on the payment of any part of the municipal indebtedness.[40] A Texas act which amends and is a part of a title of the revised statutes provides for elections to withdraw territory from corporate limits, but does not direct the manner thereof. It was held that the act was not, therefore, invalid, but that the election in question should be held as other elections provided for in the title.[41] The same act directs that, upon a petition by fifty qualified voters of territory within the limits of a municipal corporation, the mayor shall order an election to determine whether such territory shall be allowed to withdraw from the municipality, provided that such municipality be not thereby reduced to an area of less than one square mile, or one mile in diameter around the center of the original corporate limits. It was held that where there was no dispute that the requisite number of qualified voters had signed, and that the withdrawal in contemplation would leave the requisite area, the act of ordering the election involved no exercise of discretion, and mandamus would lie against the mayor in case of refusal.[42]

§ 454. **Pennsylvania rule.**—A municipal corporation is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government,—essentially a revocable agency,—having no vested right to any of its powers or franchises, the charter or act of erecting being in no sense a contract with the state, and

[39] Van Dusen v. Fridley, 6 Dak. 322; s. c. 43 N. W. 703.

[40] Evans v. City of Council Bluffs, 65 Iowa 238; s. c. 21 N. W. 584.

[41] Sansom v. Mercer, 68 Tex. 488; s. c. 5 S. W. 62.

[42] Sansom v. Mercer, 68 Tex. 488; s. c. 5 S. W. 62.

therefore fully subject to the control of the legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangement, or destroy its very existence with the mere breath of arbitrary discretion. Sic volo, sic jubeo, that is all the sovereign authority need say. This much is undeniable and has not been denied.[43] The supreme court of Pennsylvania held the power of an original borough supreme over a portion of its territory which had been detached by proceedings in the court of quarter sessions, and constituted a part of a new borough erected in those proceedings, as there was no power in the court in the manner employed to change the limits of a borough. Under the act governing such changes the procedure is by an application made for the purpose, signed by a majority of the freeholders residing within the limits of the borough; due notice must be given as directed by law, and it must be approved by the grand jury and confirmed by the court. An omission to take these steps was fatal, and the new borough was not properly formed as to the part it detached from the original borough.[44]

§ **455. Constitutionality—Wisconsin.**—A part of a town had been detached by act of the legislature from one county and annexed to another county. By legislative edict it was restored to the former. In the meantime taxes had been collected and paid to the county to which it was annexed. It was contended that an act passed subsequently, ordering the treasurer of the latter county to pay over the taxes collected and to assign titles to land bought in for such taxes to the county from which the town was originally detached, was unconstitutional because it purported to create an indebtedness from the first county to the second, which the legislature could not do. The

[43] Philadelphia v. Fox, 64 Pa. St. 169.

[44] Darby v. Sharon Hill, 112 Pa. St. 66; s. c. 4 Atl. 722; the court saying:—"The legislature may by appropriate general laws to that effect, preserving the vested rights of third parties, either enlarge or contract the boundaries of boroughs; may consolidate several such corporations into one or divide one into several. But it is incompetent for the court to dismember a borough, except as they may be authorized by law; the charter of a municipal corporation grants privileges and immunities which are perpetual, and their privileges and immunities are coextensive with the corporate limits. Their responsibility as public agents exists mainly in the performance of acts for the public benefit, but they have also a distinctly legal personality; they may make contracts, purchase property, create debts, borrow money, and they have a right, to the extent of the limits fixed by their charter, to corporate existence; their rights and responsibilities are in this regard analogous to those of private corporations, subject only to the action of the law-making power, as we have stated. The courts of quarter sessions in this respect have just such powers as the legislature has given them."

court conceded that the legislature was not competent to create such an indebtedness, but overruled the contention. They said: "But if money had been paid by mistake, growing out of hasty legislation in annexing a town in one county to another without making any provision as to the effect of the change, it would be competent for the legislature to provide in what manner this mistake should be corrected."[45] An act providing for the appointment of commissioners to adjust and settle the rights of the old and new counties is not a conferring of judicial powers upon them, where an appeal is given from their decisions to the regularly constituted courts of the state, which would make it repugnant to the constitution of Wisconsin.[46] The division of existing towns and the creation of new towns by direct action of the legislature is not the "enacting of any special or private law for incorporating any town," within the meaning of the state constitution.[47]

§ 456. Rulings as to constitution of Wisconsin on division of counties.—The constitution of Wisconsin forbade the division of a county with an area of nine hundred square miles or less without submitting the question to a vote of the people of the county and a majority of all the voters voting on the same. It has been held that bodies of water, such as Lake Michigan or a part thereof, lying within the boundaries of the county, are to be computed; and the act for the formation of a county from Washington county, which with the water area had more than nine hundred square miles, was not repugnant to this section of the constitution.[48] The original surveys of the United States government are not to be taken as conclusive by presumption of law: they may be rebutted and impeached as to their correctness; but, prima facie, they are to be presumed to be correct until their accuracy has been properly impeached.[49] The accuracy of these surveys may be put in issue by the pleadings, and be determined like other questions of fact.[50] Where a county from which territory was detached appeared by the United States surveys to con-

[45] Supervisors &c. v. Supervisors &c., 13 Wis. 490, in which it was held that an action for the amount claimed could not be sustained until the plaintiffs had submitted the claim to the defendants and it had been disallowed. This act gave no additional remedy, unless perhaps a mandamus to compel the treasurer to comply with its provisions.

[46] Forest Co. v. Langlade Co., 76 Wis. 605; s. c. 45 N. W. 598. Cf. Gough v. Dorsey, 27 Wis. 119, 131, 133; Gaston v. Babcock, 6 Wis. 503, 507.

[47] State v. Forest Co., 74 Wis. 610; s. c. 43 N. W. 551.

[48] State v. Larrabee, 1 Wis. 200.

[49] State v. Merriman, 6 Wis. 14. See also, Kane v. Parker, 4 Wis. 123, 128; Vroman v. Dewey, 23 Wis. 530.

[50] State v. Merriman, 6 Wis. 14.

tain just nine hundred square miles, the act forming a new county of the same was only prima facie unconstitutional; but the burden was upon those who supported the act to show that the county contained more.[51] The provision to submit to a vote is not merely directory to the legislature: it is inhibitory and imperative.[52] An act which submitted the act itself to popular vote of the electors of the county, but by its entire scope evidently intended only to submit the question of division to popular vote, was held valid notwithstanding the apparently unconstitutional delegation of legislative power by its inaccurate language, and was held to have provided constitutionally for a division of the county.[53] A county having originally less than nine hundred square miles in area may have attached to it a part of one which can spare the territory; and if by this addition its area is thus increased to more than the area required in this provision of the constitution, it can be divided to form a part or the whole of a new county without submitting the question to a vote.[54]

§ 457. The same subject continued—Uniformity of system of government.—The creation or division of counties, and the adjustment of the respective rights and liabilities of the new and old counties as to the assets and debts of the latter, are not part of the system of county government, which by the constitution of Wisconsin is required to be uniform.[55] To make the town board in such a case also the county board of a new county is no infringement of the rule of unity or the rule of uniformity required by the constitution as to a system of town and county government.[56] Nor was an act for dividing a

[51] State v. Merriman, 6 Wis. 14; followed in Perry v. State, 9 Wis. 19.

[52] State v. Merriman, 6 Wis. 14. See also, State v. Elwood, 11 Wis. 17.

[53] State v. Elwood, 11 Wis. 17.

[54] State v. Cram, 16 Wis. 343.

[55] Forest Co. v. Langlade Co., 76 Wis. 605; s. c. 45 N. W. 598. Cf. Crawford Co. v. Iowa Co., 2 Pin. (Wis.) 368; Town of Milwaukee v. City of Milwaukee, 12 Wis. 93; Morgan v. Beloit City, 7 Wall. 613; Town of Depere v. Town of Bellevue, 31 Wis. 120; Mount Pleasant v. Beckwith, 100 U. S. 514; Knight v. Town of Ashland, 61 Wis. 233; s. c. 21 N. W. 65; Schriber v. Town of Langlade, 66 Wis. 616, 629, 631; s. c. 29 N. W. 547, 554; Yorty v. Paine, 62 Wis. 154, 161; s. c. 22 N. W. 137; Hall v. Baker, 74 Wis. 118; s. c. 42 N. W. 104; State v. Forest Co., 74 Wis. 610, 615; s. c. 43 N. W. 551.

[56] Cathcart v. Comstock, 56 Wis. 590; s. c. 14 N. W. 833. The court say:—"There may be necessity for more than one town, and yet there may be necessity for a county. But a county necessitates a board of supervisors, and if it contains but one town, then there can be but one chairman in such town, and it would hardly be claimed that one person should constitute such board. [Where there are several towns in a new county the law here provided that the chairman of the supervisors of the different towns should constitute the county board.] It [the board of the town] supplies a necessity, and is as nearly uniform as practicable, and preserves the unity of the sys-

county into three towns in violation of the same constitutional provision.[57]

§ **458. Title of act.**—An act which expressed its object to be to "incorporate" a certain township, but only mentioned one of the townships from which it was to be taken, is not repugnant to the constitution of New Jersey, providing that the object of an act must be expressed in its title, because of its omission of the other township furnishing a portion of its territory.[58] As to the objection to the title not embracing all the subject-matter of the bill, it was held that the title, "An act to create and establish the county of Lake from portions of Sumter and Orange counties," was broad enough to cover any provision as to the location of the county site or a change of the same at any period or stage of the existence of the county.[59]

tem in that it constitutes the county board from town supervisors."

[57] Chicago &c. R. Co. v. Langlade Co., 56 Wis. 614; s. c. 14 N. W. 844. The court say:—"It is the one system which is to be as nearly uniform as practicable. It is that which is to be protected against legislative encroachment. This system which is to be thus guarded is nothing more nor less than the plan or scheme by which the town and county are to be governed. Within the limits of the constitution this plan or scheme of governing either town or county may be changed by the legislature without any interference with the other. The mere fact that the legislature, in a given case, prescribes a particular method of organizing new towns and bringing them into the one established system, does not necessarily imply that the plan or scheme of governing such new towns, after they are thus brought into the system, is to be any different from that in other towns. The incipient steps leading towards organization should not be mistaken for the more advanced stages. A town implies inception and progression as well as completed organization. The same is true of a county. Induction into the family of local governments is quite a different thing from exercising the functions of such government after having been thus inducted. The one involves action prior to reaching the system, the other implies action after becoming a constituent part of it. The unity and uniformity required apply to the organization when completed rather than the methods to bring about such organization."

[58] State v. Elvins, 32 N. J. L. 362; the court saying:—"Any statement in the title, as to the territory to be taken to form the new town, was unnecessary. Such statement goes beyond the mere expression of the object of the statute, and is a particularity which the constitution does not require."

[59] County Com'rs &c. v. State, 24 Fla. 263; s. c. 4 So. 795; the court saying:—"Provisions for such change, whether from a temporary or a permanent, an original or a subsequent location, are a part of the county government established. Any provision relating to its organization or government, though for use in the future, is as much matter properly connected with the establishment of the county as are those relating to the earliest stages of its existence.

§ 459. Florida decisions on constitutionality of acts.—A section of the Florida statutes providing for the incorporation of cities and towns authorized the county commissioners to prescribe new boundaries of an incorporated town, when, on the petition of five registered inhabitants of the town setting forth that "the boundaries of the town are of unreasonable and unnecessary extent," it shall be found by the commissioners that the boundaries of such town "are extended beyond necessary and useful limits, and include an undue amount of vacant farming lands." Another section of the law authorized the county commissioners to enlarge the boundaries of any city or town on the application of the corporate authorities thereof. This act has been held constitutional over an objection that it conferred judicial functions upon the county commissioners.[60] Neither was the grant of power to a board of county commissioners of a new county, or a majority of them, to locate the temporary county site, a delegation of the lawmaking power; nor was it prohibited by the constitution of Florida in legislation organizing a new county.[61] In another case there was a contention that the legislature had annulled and abrogated a contract between the county and bondholders, by disrobing the county, without her consent, in creating new counties from the territory composing the county at the time of issuing the bonds. It was held that severing a portion of the territory of a county by act of the

The subject of the establishment of a county, within the meaning of the constitutional provision in question, includes not merely what is necessary to put it on its feet as a county, but anything that may concern its future existence or operation. Nothing is more properly connected with the subject of establishing a county than making provision for a change of the county site in the future." The court cited Cooley Const. Lim. 144; Morford v. Unger, 8 Iowa 82; Whiting v. City of Mt. Pleasant, 11 Iowa 482; Bright v. McCullough, 27 Ind. 223; Mayor &c. v. State, 30 Md. 112; State v. Town of Union, 33 N. J. L. 350; Humboldt Co. v. Churchill Co. Com'rs, 6 Nev. 30.

[60] City of Jacksonville v. L'Engle, 20 Fla. 344; the court saying that, "like the powers to hear and determine applications to lay out, open and discontinue roads, locate and build bridges, and similar powers and duties, they merely exercise such judgment and discretion, adopting such measures under the law as to them may seem conducive to the public convenience and public needs." At the same time the court held that the power to sever a part of a town solely for the purpose of annexing it to another was not conferred by this act.

[61] County Com'rs &c. v. State, 24 Fla. 263; s. c. 4 So. 795; the court saying:—"Where the legislature has the power to do a thing by law, and the constitution has not prescribed the manner of doing it, or the nature of the thing is not such as to require that it be done directly by the legislature, it may, through the provisions of its law, use any proper instrumentality for effecting the result to be accomplished."

legislature was not a taking of "private property for public use without a just compensation."[62]

§ 460. **Kansas decisions.**—A Kansas statute, which was intended in its language to make liable for bonds issued by an original old township for building a bridge the people of a new township which had before the building of the bridge been detached from the old one, was held unconstitutional and void, because under the facts and circumstances of the case such people were under no moral obligation to assist in paying such bonds.[63] A former act containing slightly different provisions was held valid upon the theory that it simply furnished a remedy for the enforcement of a pre-existing moral obligation.[64] A vote does not create any liability or any contract, but merely gives authority to afterward create such liability or contract.[65]

§ 461. **How partition affects officers.**—Where a county is divided and two separate and distinct counties formed out of it by act of the legislature, to one of which a new name is given, whilst the other, it is declared, shall be and remain a separate and distinct county by the name of the county as it existed previous to the division, judges of

[62] County Com'rs &c. v. King, 13 Fla. 451; the court not being able to "perceive how the state can be substituted as the debtor, and liable to pay the debts of the county, by the action of the legislature in changing her boundaries."

[63] Craft v. Lofinck, 34 Kan. 365; s. c. 8 Pac. 359. The people of the old township had voted for the building of a bridge. Before it was done the new township was detached from it. Afterwards the new township built a bridge which was "an imperative public necessity." The old township built the one for which the bonds in this case were issued. It did not appear that this one was needed. The view of the court was that it is necessary in order to enable the legislature by retrospective legislation to impose a legal liability upon the people owning property in a portion of a township or other subdivision of the territory of a state where no such liability existed before, that a pre-existing moral obligation should rest upon such people to discharge such liability. And in such a case, though it is clearly within the province of the legislature in the first instance, to determine the question whether such a moral obligation exists or not, yet it is not exclusively within its province. The determination of the question finally devolves upon the court. The court distinguished cases where an act of 1873, ch. 142, had been interpreted. That act made detached territory liable only for bonds that had been "authorized and issued" prior to the detachment of the territory; while § 2 of the act of 1883 made the detached territory liable only where a vote authorizing the township to issue its bonds was had prior to the detachment.

[64] Commissioners &c. v. Bunker, 16 Kan. 498. Cf. Commissioners &c. v. Nelson, 19 Kan. 234; Board &c. v. Board &c., 26 Kan. 181; Chandler v. Reynolds, 19 Kan. 249.

[65] Union Pac. R. Co. v. Board &c., 6 Kan. 256.

county courts appointed previous to the division who happen to reside in that portion of the territory distinguished as a county with a new name, under the operation of an act requiring judges of county courts to reside within the counties for which they are appointed, lose their offices, and are no longer competent to act under their commissions; those continuing in the portion which retains the original name continue to the expiration of their term.[67] It seems that by express enactment the legislature might have continued these judges in office; but failing to do that the office is gone.[68] On similar reasoning the supreme court of Ohio have held that the county commissioners of any of the counties from which a new county is formed whose residences are thrown into the new county lose their offices.[69] Where a town is divided by the incorporation of a part of it as a new town, such new town remains in the same judicial district as the old one, in the absence of anything to the contrary in the statute incorporating it.[70] A provision in an act annexing the larger portion of a village to a city that the taxes in the annexed territory shall be collected as if the act had not been passed does not have the effect of retaining a former treasurer of the village in office for the purpose of collecting the taxes.[71] Where a portion of a township is declared by proclamation a city of the second class, the residue retains its organization; and the members of the township board are still de facto officers at least,

[67] People v. Morrell, 21 Wend. 563; the court distinguishing Ex parte M'Collum, 1 Cowen (N. Y.) 550, and People v. Garey, 6 Cowen (N. Y.) 642, in the first of which the court held that a legislative organization of a new county by combining several definite subsisting towns of other counties, and declaring that the justices already appointed for those towns respectively should hold for the residue of their terms in the same towns, and relatively to the new county, was constitutional; and the last holding that in a similar erection of the county of Orleans from definite subsisting towns of Ontario county, the legislature had no power to abridge the term of office for which the several justices had been appointed while their towns belonged to Ontario. The distinction was that in neither case was there even a change in the name or territorial limits of the corporations to which the offices in question belonged; much less an actual dissolution of those corporations.

[68] Cases cited in preceding note.

[69] State v. Walker, 17 Ohio 135.

[70] Commonwealth v. Brennan, 150 Mass. 63; s. c. 22 N. E. 628; where it was held that a justice of the peace with authority to issue warrants in criminal cases anywhere within the district, whose residence fell within the new town, might continue to issue warrants in such cases as above therein as well as elsewhere within the district.

[71] So held in Ketcham v. Wagner, 90 Mich. 271; s. c. 51 N. W. 281, a case where the former treasurer resided in the portion of the village annexed to the city of Detroit, by local act 1891, No. 214, and an election of a new treasurer for the village had become necessary.

although they reside within the limits of the new city.[72] Under the statutes of Nebraska concerning township organization, when, in a new town erected by the county board, in the division of the county into towns or townships, at the first meeting of said board, the offices of the town board as well as the town clerk are all vacant, it is the duty of the county clerk to fill such vacancies as well as all other vacancies in the offices of such town by appointment.[73] Although commissioners living within the territory taken from their county cease to be commissioners unless they remove to parts of the county remaining unaffected by the division, still, if before removal they appoint a county treasurer, their act will be valid as that of de facto officers.[74]

§ 462. Where unorganized territory has been attached to a county.—The Nebraska statute[75] which provides for attaching unorganized territory to the "nearest organized county directly east for election, judicial and revenue purposes" has been construed; and it has been held that an unorganized county did not thereby become a part of the organized one, but for certain purposes therein named was placed under its care; and that, therefore, after the organization of such unorganized territory as a county and the qualification of its officers, taxes on property in the county were payable to them and not to officers of the county to which it was formerly attached.[76] So, also, where after the officers of an organized county have levied taxes on property in an unorganized county attached thereto, and before the taxes become due the unorganized county is organized, the taxes are payable to the treasurer of the new county.[77] Garfield county, which was created by the laws of Kansas, 1887, chapter 81, was by chapter 132 attached with other unorganized counties to Hodgeman county for judicial purposes; chapter 142 provided for district courts in Garfield county. These acts were approved by the governor the same day. Chapter 132 was published March 11th, and repealed conflicting provisions, and chapter 142 on March 10th. Upon the question of legality

[72] Walnut Tp. v. Jordan, 38 Kan. 562; s. c. 16 Pac. 812.

[73] State v. Forney, 21 Neb. 223; s. c. 31 N. W. 802; where this particular township was formed of territory not theretofore constituting a precinct or town, and containing within its boundaries no person elected as a town officer at any election.

[74] State v. Jacobs, 17 Ohio 143.

[75] Compiled Stats. of Neb., ch. 18, § 146.

[76] Fremont &c. R. Co. v. Brown Co., 18 Neb. 516; s. c. 26 N. W. 194; the court saying that, "being an organized county, the ligament that bound it to the former county is severed by the force of the organization and it takes its place as one of the counties of the state, and its officers become amenable to the law for the faithful performance of their duty."

[77] Morse v. Hitchcock Co., 19 Neb. 566; s. c. 27 N. W. 637.

of the detention of a prisoner by the sheriff of that county, it was held that the several acts must be considered together, and that Garfield county was attached to Hodgeman county for judicial purposes only until organized; after its organization courts should be held in Garfield county.[78] By the laws of Texas, 1856, page 41, Archer county was attached to Clay county for judicial purposes. By the laws of 1866, page 94, it was attached to Jack county "for judicial and other purposes." By the laws of 1870, page 53, it was attached to Montague county "for judicial purposes" only. This last act was superseded by the laws of 1874, page 53, changing the terms of court, which omitted the clause attaching Archer to Montague., In 1879 (laws of 1879, p. 150) it was attached to Clay "for judicial and other purposes." It was held that, under the operation of the foregoing statutes, Archer county was not attached to Clay for any purpose in August, 1875, and that the registration in the latter county of a deed of land situate in the former was not constructive notice.[79]

§ 463. **Settlement of inhabitants.**—When part of the territory composing a township is by the act of the legislature formed into a new township, those persons who at the time of separation had a legal settlement in the old township, and resided on the territory so cut off, acquire ipso facto a legal settlement in the new township.[80] The court said: "This doctrine seems to flow from what may reasonably be presumed to have been the object of the legislature in creating the new township; namely, that instead of the public relations previously existing between the inhabitants and the old township, there should be substituted similar relations between them and the new township."[81] This rule was adopted by statute in Massachusetts as early as 1793, but the courts of that state deemed it a principle of the common law deducible from the nature of corporate rights and duties.[82] Chief Justice Shaw speaks of the statute as "little more than an authoritative declaration of rules which had been before established as the rules by which persons had been held to acquire settlements."[83] The New York court was divided on this question, but the principle adopted in Massachusetts was approved by Chief Justice Kent.[84] In New Jersey

[78] In re Hall, 38 Kan. 670; s. c. 17 Pac. 649.

[79] Alford v. Jones, 71 Tex. 519; s. c. 9 S. W. 470.

[80] Overseer &c. v. Overseer &c., 51 N. J. L. 93; s. c. 16 Atl. 184.

[81] Overseer &c. v. Overseer &c., supra.

[82] Inhabitants &c. v. Inhabitants &c., 4 Mass. 384, 390; Inhabitants &c. v. Inhabitants &c., 4 Mass. 676, 678; Inhabitants &c. v. Inhabitants &c., 14 Mass. 253, 256.

[83] Inhabitants &c v. Inhabitants &c., 6 Met. (Mass.) 484, 486.

[84] Overseers &c. v. Overseers &c., 3 Johns. (N. Y.) 193. Cf. Stillwater v. Green, 9 N. J. L. 59; Overseers &c. v. Overseers &c., 32 N. J. L. 66.

a residence of ten consecutive years in the same dwelling, begun while the dwelling-place is in one township and ended after it has been comprised by act of the legislature within the limits of another township, will confer a legal settlement in the latter township by force of the statute,[85] which has been held to be retrospective.[86]

§ 464. **Territory severed from an old to form a new corporation is a part of the old until the new is fully organized.**—Where part of a town is detached from it and incorporated as a city by an act of the legislature, which provides for an election of city officers by a certain time, and the election is not held, thus leaving the organization of the city in abeyance, it continues to be a part of the town until the organization of the city is completed.[86a]

§ 465. **Some Wisconsin acts construed.**—An act of the legislature provided for a division of a county, by which the territory of one town and fractions of other towns was erected into a new county. The construction placed upon this act by the supreme court of Wisconsin was

[85] Rev. Supp. N. J. 800; Overseer &c. v. Overseer &c., 51 N. J. L. 93; s. c. 16 Atl. 184.

[86] Inhabitants &c. v. Inhabitants &c., 50 N. J. L. 509; s. c. 14 Atl. 595; Woodbridge v. Amboy, 1 N. J. L. 213.

[86a] State v. Button, 25 Wis. 109; the court holding that the act did not proprio vigore sever this part of the town so completely as to make the votes of its inhabitants in the town illegal. The court cite as sustaining their view, Haynes v. Washington Co., 19 Ill. 66, where the court said:—"Grants of corporate powers for purposes of local municipal government, such as belong to towns and cities, are a delegation of a portion of the general sovereignty of the state designed to enable the inhabitants of particular localities to establish and maintain police regulations and to advance their common prosperity. A charter or act of incorporation is but evidence of the powers delegated, and which powers remain dormant or in abeyance until in the mode pointed out in the charter the inhabitants for whose benefit those powers are granted bring them into life and exercise by an organization of the local government. Here the law incorporating the town in authorizing the inhabitants to form by the means provided a local government was evidently intended for the benefit of the inhabitants, and is presumed to have been made at their instance and not upon the consideration that the common good and policy of the state demanded the establishment of such local government and the separation of the particular territory for such purpose from the jurisdiction of county authority. Until an organization by an election and qualification of the number of persons being the several integral parts of the corporation, and forming the political body provided for in the laws, there could be in being no municipal corporation or government; and the condition of the inhabitants within the limits named in the law as to rights and duties would continue unchanged and unaffected by the law authorizing them in a corporate capacity to exercise municipal powers."

that the original county had jurisdiction for governmental purposes over the detached territory only until the organization of the new county was effected; and that as it embraced but one complete town the supervisors of that town became the board of supervisors of the new county, and the new county was at once an organized county. Upon the organization of the new county the whole of its territory became for the purposes of town government one town; and the organized town was in effect enlarged so as to embrace the whole of such territory.[87] This act was not repugnant to the constitution, which was intended to prohibit the enactment of any special or private law for incorporating any town or village by special charter, or for the amendment of such charter. This has no reference to quasi-corporations like the towns which exist as political subdivisions in this state.[88] A new county having been formed of a part of another, the same act providing for an appointment of officers for the new county by the governor, though the suspension of the power of the people to elect their own officers might be invalid, the offices were properly created and existed de jure; and the persons appointed thereto having entered upon the duties of such offices were officers de facto whose official action could not be questioned collaterally.[89]

§ **466. Provisions of act as to county sites.**—In Florida an act creating a new county has been held constitutional over an objection that by its provisions it allowed the commissioners of the new county to establish a temporary county seat and afterwards order an election for a permanent county seat; it being urged that this amounted to a removal of the county seat, and the constitution forbade removal of county seats except by a general law.[90] The supreme court of Michi-

[87] Cathcart v. Comstock, 56 Wis. 590; s. c. 14 N. W. 833, which sustained the authority of the supervisors of the town to levy and apportion taxes upon such property as was situated in the original town, and the sales of such property made by the county treasurer of the new county, after he was elected, as to the period before an election of the other county officers. The election of town officers for the town as enlarged by virtue of the statute afterwards was also held to have been proper, and assessment, apportionment and levy of taxes made by their town supervisors so elected acting as a county board was properly made for the next year.

[88] Cathcart v. Comstock, 56 Wis. 590; s. c. 14 N. W. 833.

[89] Chicago &c. R. Co. v. Langlade Co., 56 Wis. 614; s. c. 14 N. W. 844 (action to set aside an assessment of taxes on the ground of lack of authority of the officers of a new county to assess, etc.).

[90] County Com'rs &c. v. State, 24 Fla. 263; s. c. 4 So. 795; the court holding that the proviso, "that in the formation of new counties the county seat may be temporarily established by law," qualifies the constitution, art. 8, § 4, providing that

gan has also held that an election of a permanent county seat under the provisions of the laws of Michigan organizing the county of Iron, and naming a temporary county seat until the next general election, when it provided for the election of a permanent one, could not be regarded as the removal of a county seat once established, and that the law was not unconstitutional for not conforming to the requirements of the constitutional provision for such removals.[91] But the supreme court of West Virginia has held that the provisions of the statute law of West Virginia, prescribing the manner in which the county seat of any county may be relocated by a vote of the people at a general election, apply to all the counties in the state, including those whose county seats were declared permanent in the special act of the legislature creating such counties.[92]

§ 467. **Apportionment of liabilities.**—When a county, city or town is divided and its territory reduced or set apart by legislative authority, the legislature may make regulations not only to apportion the property of the corporate body among the new members or communities created, but to throw the obligation to pay the debts of the entire body upon the several parts in proportion to the taxable wealth of each.[93] The Michigan statute relating to settlements between the respective boards of supervisors where two counties are formed out of one has been held not to contemplate any other division than of existing property and liabilities, nor to provide for the assumption by one county of the whole burden of state taxation for both counties until the next equalization.[94] And a provision requiring state taxes to be levied for five years on the basis of the last equalization, has been

"the legislature shall have no power to remove the county seat of any county, but shall provide by general law for such removal," so far as it was a limitation upon the power of the legislature. By the proviso there was reserved to the legislature the power to establish for the new county a temporary county seat, which should not be subject to such limitation, but should be the county seat only until the permanent county seat should be established in the manner provided by the act organizing the county. The court said:— " . . . The power to make a county . . . necessarily includes the power to create and do everything necessary and proper to its perfect organization that is not prohibited by other portions of the constitution, and a county site is, to say the least, a proper, if not necessary, element of county organization."

[91] Attorney-General v. Board &c., 64 Mich. 607; s. c. 31 N. W. 539.

[92] Welch v. County Court &c., 29 W. Va. 63; s. c. 1 S. E. 337.

[93] Canova v. State, 18 Fla. 512. See, where this is well considered, County Com'rs v. King, 13 Fla. 451, 472.

[94] Supervisors &c. v. Supervisors &c., 74 Mich. 721; s. c. 42 N. W. 170.

held not to mean that when two counties are made out of one the old county must bear the whole burden of state tax as before the division, until the next equalization; the proportion which the assessment rolls of the year when the last equalization was made, of all the towns in the new county, bear to the aggregate assessments of all the towns then in the old (undivided) county, furnishes the rule of apportionment for the two counties until the next equalization.[95] The New Jersey act which divided the township of Hackensack into the townships of Ridgefield, of Englewood and of Palisades, and which declared that the inhabitants of said townships should be liable to pay their just proportions of the debts of the inhabitants of the township of Hackensack, did not, proprio vigore, make any single township legally responsible for any particular debt, even though the debt had been wholly contracted for work done within its territorial limits.[96] The legislature has power to divide counties and towns at its pleasure, and to apportion the common property and the common burdens in such manner as to it may seem reasonable and equitable.[97] Where the general assembly created a new county out of territory formerly belonging to other counties, and to compensate such counties added territory to them from adjoining counties, it was competent also to provide that the county receiving the accession should levy an equitable proportion of the indebtedness of the county from which such territory was taken.[98]

§ **468. Rules as to property and liabilities.**—Upon the division of a municipal corporation and the organization of a new one out of a portion of the old, in the absence of legislative provision to the contrary, the old corporation owns all the public property within its new limits and is responsible for all the debts of the corporation contracted before the act of separation was passed; the new corporation has no claim to any of the property except what falls within its boundaries and to which the old corporation has no claim.[99] Where

[95] Supervisors &c. v. Supervisors &c., 74 Mich. 721; s. c. 42 N. W. 170.

[96] So held in Vanderbeck v. Inhabitants &c., 39 N. J. L. 345; sustaining a nonsuit which had been ordered in an action brought by one on a claim against Hackensack township for work done on Engle street, which became a part of Englewood.

[97] Morrow Co. v. Hendryx, 14 Or. 397; s. c. 12 Pac. 806. See also, Canova v. State, 18 Fla. 512; Trinity Co. v. Polk Co., 58 Tex. 321; Pulaski Co. v. County Judge, 37 Ark. 339; Supervisors &c. v. Supervisors &c., 58 Miss. 619; Eagle v. Beard, 33 Ark. 497; State v. McFadden, 23 Minn. 40; Askew v. Hale Co., 54 Ala. 639; Commissioners &c. v. Commissioners &c., 79 N. C. 565; Commissioners &c. v. Bunker, 16 Kan. 498.

[98] Commissioners &c. v. Auditor &c., 1 Ohio St. 322.

[99] Commissioners &c. v. Commissioners &c., 92 U. S. 307; Bristol v. New Chester, 3 N. H. 524.

two separate towns are created out of one, each in the absence of any statutory regulation is entitled to hold in severalty the public property of the old corporation which falls within its limits.[100] If a town is divided and a part of its territory with the inhabitants therein is incorporated into a new town, the old town will retain all the property and be responsible for the existing liabilities, unless there is some legislative provision to the contrary; but upon such division the legislature has constitutional authority to provide that the property owned by the original town shall be apportioned or held for the use and enjoyment of the inhabitants of both towns, and to impose upon each town the payment of a share of the corporate debts.[101] An act creating a new county out of territory formerly embraced in another county failing to provide for a division of the school fund, the whole fund belonging to it before the division may be retained by the parent county.[102]

§ 469. **The same subject continued.**—Upon the formation of a new county out of a portion of another, the debt of the latter to the state was apportioned between the two, and each issued certificates for its share. By the acts under which the debt was originally incurred a railroad company for whose benefit it was incurred was required to pay certain sums into the state treasury to apply on the debt. It was held that the sums paid by such company should be applied to the certificates of the two counties in proportion to the share of debt assumed by each.[103] A general law providing for the apportionment of debts and credits in all cases where new counties are created does not

[100] Town of North Hempsted v. Town of Hempsted, 2 Wend. (N. Y.) 109; Hartford Bridge Co. v. Town of East Hartford, 16 Conn. 149, 171.

[101] Inhabitants &c. v. Skillings, 45 Maine 133. In support of first clause, see Inhabitants &c. v. Inhabitants &c., 4 Mass. 384, and Inhabitants &c. v. Inhabitants &c., 16 Mass. 86, where the same doctrine is reiterated. In support of second clause, see Inhabitants &c. v. Inhabitants &c., 4 Mass. 278; Inhabitants &c. v. Inhabitants &c., 4 Mass. 315; Inhabitants &c. v. Inhabitants &c., 4 Mass. 384; Minot v. Curtis, 7 Mass. 441; Inhabitants &c. v. Dunning, 7 Mass. 445; Inhabitants &c. v. Inhabitants &c., 16 Mass. 16; Inhabitants &c. v. Inhabitants &c., 16 Mass. 76.

[102] Cooke v. School Dist., 12 Colo. 453; s. c. 21 Pac. 496, 719; the court holding that a making of the estimate of what proportion of the school-fund of a county belongs to the several school districts by the county superintendent under general statutes of Nebraska, § 3067, was not of itself sufficient to vest in the several school districts the ownership of their respective shares; therefore concluding that the counties and not the school districts are owners of the school-funds until they are accredited to the several school districts.

[103] State v. Harshaw, 73 Wis. 211; s. c. 40 N. W. 641.

deprive subsequent legislatures of the power to provide otherwise as to counties created by them.[104] The divided county has the same rights, duties and burdens as before in respect to the remaining territory, except as changed by the legislature.[105] School districts are corporations for certain specified purposes, and neither their rights nor their obligations are affected by a change of their names or alteration of their boundaries.[106] In the change of county lines whereby territory is detached from one county and attached to another, the county acquiring the additional territory is not entitled to demand from the other any portion of the funds in its treasury.[107] If part of the territory of a town is separated from it by annexation to another, or by the creation of a new corporation, without any provision for contribution to the debts of the old town, and that retains all its property and franchises, such detached portion is not liable therefor.[108] A county from which territory is detached to form part of a new county is entitled to deduct its existing indebtedness from the bridge fund, as well as other moneys previously collected and remaining in its treasury at the time of the division; and the balance only, after making the deduction, is required to be divided between the old and new counties.[109] If an equitable claim exists against a new county in favor of an old county growing out of its being erected from the latter, it is competent for the legislature to create by law a board of commissioners to ascertain, settle and report the amount due, and further, to compel the board of supervisors of the county to levy a special tax to pay the amount reported to be due.[110] It has been held in California that a claim of an old county against a new one formed out of it for the payment of its proportion of the debt of the old is of an equitable nature only, and that it requires legislation to enable the old county to enforce it.[111] The act forming the new county was held not to require the new county to pay interest on its proportion of the debt of the old.[112]

§ 470. A Wisconsin case on property rights.—The towns of Wisconsin by operation of the laws of the territory became the owners of lands which were held for the benefit of those corporations. When the territory became a state these rights were preserved by the constitu-

[104] Forest Co. v. Langlade Co., 76 Wis. 605; s. c. 45 N. W. 598.

[105] Attorney-General v. Fitzpatrick, 2 Wis. 542.

[106] District No. 3 v. Macloon, 4 Wis. 79.

[107] Commissioners &c. v. Commissioners &c., 16 Ohio 466.

[108] Town of Depere v. Town of Bellevue, 31 Wis. 120.

[109] Commissioners &c. v. Commissioners &c., 2 Ohio St. 508.

[110] People v. Board &c., 26 Cal. 641.

[111] Beals v. Board &c., 28 Cal. 449.

[112] Beals v. Board &c., supra.

tion and laws of the state: the partition of a town and the annexation of a portion of its territory to another municipality which was incorporated as a city made no change in these rights: the town continued to hold its title to this real estate. The legislature had an undoubted right to change the territorial limits of municipal corporations, and to detach this territory from one and annex it to another, and in so doing might provide for an equitable division of the common property; but where this detaching and annexation is done without providing for the disposal of the land, under such circumstances that the assent of the town to part with its title can not be presumed, it continues the owner notwithstanding the separation; the legislature has not the power, either directly or indirectly, to divest a municipality of its private property without the consent of its inhabitants.[113]

§ 471. **Rules as to apportionment of liabilities and remedies.**—A village may be created out of the territory of a city, and as between the city and the village the legislature may apportion the existing indebtedness; but when the corporation which created the debt is shorn of its population and taxable property to such an extent that there is no reasonable expectation of its meeting its present indebtedness, and it is unable to do so, the creditors at least can enforce the proportionate share of their obligations against the two corporations carved out of one, both being liable to the extent of the property set off to each respectively.[114] Where a county has been divided by

[113] Town of Milwaukee v. City of Milwaukee, 12 Wis. 93. Dixon, C. J., said:—"The difficulty about the question is to distinguish between the corporation as a civil institution or delegation of merely political power, and as an ideal being endowed with the capacity to acquire and hold property for corporate or other purposes. In its political or governmental capacity it is liable at any time to be changed, modified or destroyed by the legislature; but in its capacity of owner of property, designed for its own or the exclusive use and benefit of its inhabitants, its vested rights of property are no more the subject of legislative interference or control, without the consent of the corporators, than those of a merely private corporation or person. Its rights of property once acquired, though designed and used to aid it in the discharge of its duties as a local government, are entirely distinct and separate from its powers as a political or municipal body. It might sell its property, or the same might be lost or destroyed, and yet its power of government would remain. In its character of a political power, or local subdivision of government, it is a public corporation, but in its character of owner of property it is a private corporation, possessing the same rights, duties and privileges as any other." See also, Bailey v. Mayor &c., 3 Hill (N. Y.) 531.

[114] Brewis v. City of Duluth, 3 McCrary 219.

an act of the legislature, one portion thereof retaining the former name, county seat, county organization, county buildings and all other county property, and the other portion being formed into new counties, the county retaining such name and organization is responsible and liable solely for the entire indebtedness of the county at the time of such division, and can not bring an action for contribution against the counties thus set off, unless specially authorized to do so by a legislative provision.[115] Where a city was created out of a town by an act of the legislature, which made the city and the town liable proportionately for the indebtedness of the town created before the city and town were separated, it was held that as the apportionment of this liability between the town and the city, depending upon accounts and computations founded upon the proper assessment roll, could not be made in an action at law, a bill in equity was the proper remedy to apportion such indebtedness between the two municipalities, especially as authority to tax for the payment of municipal liabilities, in cases like this, was in the nature of a trust.[116] But where it appears that the property left to the old corporation has increased rapidly and is sufficient to meet the debt apportioned to it, there is no legal or equitable reason for going behind the legislative apportionment.[117]

§ 472. Rules in North Carolina as to settlement between new and old counties.—Where a new county was created providing that "that portion of the citizens and taxable property taken from" two other counties "and attached to the" new county "shall not be released from their portion of the outstanding public debts" of the two counties "contracted before the passage of the act;" and the matter to be adjusted by the county commissioners of the three counties in such manner and mode as might be agreed upon, and one of these counties appointed a commissioner, but the new county took no action whatever,—it was held that the county appointing a commissioner could maintain an action against the new county to have an account taken to ascertain the indebtedness at the passage of the act, and obtain judgment for the amount found due as the new county's proportion, and for mandamus to compel its county authorities to levy upon the people and property detached from the complainant county to pay said judgment.[118] The interest and claims of the two coun-

[115] County Com'rs v. County Com'rs, 1 Wyo. Ter. 140.

[116] Morgan v. City and Town of Beloit, 7 Wall. 613.

[117] Morgan v. City and Town of Beloit, supra.

[118] Commissioners &c. v. Commissioners &c., 107 N. C. 291; s. c. 12 S. E. 39.

ties from which territory was detached against the new county being several, it was not necessary to join the other county as a party-plaintiff.[119] The following rulings were made upon the merits: The act created no change in the liability of the people and property taken from the complainant county: it continued their liability just as it stood at the time of the separation, and as if no separation had taken place. The court established this rule for determination of the indebtedness of the complainant county. Judgments rendered against it before the separation and paid after with money raised before should be deducted. The total indebtedness at the time of separation should be reduced by the balance of taxes collected or collectible in the year before and on hand six months after the separation, since such balance was applicable to the payment of indebtedness outstanding one year before the separation. But such indebtedness should not be reduced by the amount of the taxes collected for the year before separation, and applied to the current expenses for the six months after, since those taxes were expressly designed by law for that purpose. Nor should it be reduced by an amount equal to the value of certain lands held at the time of separation, in excess of the needs of the county. The people detached had no right to have such lands sold to pay the county debt, in the absence of an appropriation to that purpose before the separation.[120]

§ 473. **Rules for adjustment of liabilities.**—Power being reposed in the commissioners of an old and a new county formed from it to apportion the debt of the old between the two, and to adjust and settle all matters of revenue proper to be done on account of the formation of the new county, the new county is liable for its share of the existing debt, without making any deduction on account of cash in the treasury of the old county, or of unpaid taxes due to it.[121] And such new county is liable in præsenti to the old county for its share of the debt though part of the debt is not due.[122] And claims against the old county which are the subject of pending litigation, and the validity of which is denied by that county, can not be included in the debt to be apportioned.[123] Where, upon the formation of a new town out of

[119] Commissioners &c. v. Commissioners &c., 107 N. C. 291; s. c. 12 S. E. 39.

[120] Commissioners &c. v. Commissioners &c., supra.

[121] Board &c. v. Board &c., 15 Colo. 320; s. c. 25 Pac. 508.

[122] Board &c. v. Board &c., supra.

[123] Board &c. v. Board &c., supra. On the organization of a new borough out of part of an old one which has a funded debt, under act of Pennsylvania, May 29, 1889 (P. L. 393), the rights and liabilities of the old borough and its creditors may be adjusted under act of Pennsylvania, June 1, 1887 (P. L. 285), which provides for adjusting the lia-

part of the territory of an old one, a part of the indebtedness of the old town is prorated to the new under the revised statutes of Wisconsin, section 672, requiring the new town to pay its proportion of the indebtedness of the old, but the board divides this indebtedness according to the assessment roll of the old town next preceding the last, instead of according to the last one as required by that statute, whereby the new town is charged with less than it would have been had the apportionment been made as required, the new town can not resist payment of its proportion on the ground that the apportionment was not in accordance with the statute.[124] Under the same statute, after an apportionment of the debt the old town can sue for the amount due from the new town if it refuses to pay.[125] Where a new county including a portion of an old one has been created under an act which declared that the detached portion of the old county should remain liable for the payment of certain old bonds of the latter, and after the date of this act the old county had refunded a portion of those bonds and issued new ones, it was held that the new bonds were only evidence of the old debt, and the detached portion of the old county still remained a part of it for the payment of the bonds.[126]

§ 474. **Liabilities which fall upon the portion severed.**—In the division of towns the legislature may apportion the burdens between the two, and may determine the proportion to be borne by each.[127] A new county may be made liable for a ratable proportion of the existing liabilities of the counties out of which it is created under the constitution of Nebraska.[128] Where territory, parts of two townships, was subjected to certain incumbrances in its former relations, justice requires that the same incumbrances should go with the territory when taken for a new town.[129] A county created from a portion of another has been held in Arkansas, in a proceeding to determine its pro-rata indebtedness on account of liabilities of the old county as provided in the act creating it, to be liable for its pro-rata share of such

bilities for "all indebtedness" of a borough when proceedings are commenced for changing its limits: Borough of Sharon Hill, 140 Pa. St. 250; s. c. 21 Atl. 394.

[124] Town of Ackley v. Town of Vilas, 79 Wis. 157; s. c. 48 N. W. 257.

[125] Town of Ackley v. Town of Vilas, supra.

[126] Montgomery Co. v. Menefee Co. Court, 93 Ky. 33; s. c. 18 S. W. 1021.

[127] Sill v. Village of Corning, 15 N. Y. 297; Mayor &c. v. State, 15 Md. 376; City of Olney v. Harvey, 50 Ill. 453; Borough of Dunmore's Appeal, 52 Pa. St. 374.

[128] In re Establishment of New Counties, 9 Colo. 639; s. c. 21 Pac. 478.

[129] State v. Elvins, 32 N. J. L. 362, holding an assessment upon the inhabitants of a portion of the new town for a debt of the town from which it was formed, of which these prosecutors were not residents, valid.

portion of the bonds signed before the division of territory for the purpose of building a court-house and jail, as were absolutely negotiated and sold, as well as interest from the date of negotiation. There was a contention that as they had been all signed and placed in the hands of the county commissioners the new county was bound for its share of the whole. This the court overruled for the reason that as long as they were in the hands of the old county's agents unnegotiated they were the property of the county, and there was no debt or liability.[130] Under an act creating a new county, A, out of parts of old counties, among which was B, and providing that the new county "shall pay its portion of the debts of the counties respectively from which said county is formed, said proportions to be determined by the assessed value of the * * * property within its limits," the supervisors of the old counties continued to be the auditing boards of the new as to all pre-existing debts. It was also held that where bonds issued by the supervisors of B county for a debt existing at the time of the creation of A county were voluntarily paid off by the officers of B county without objection by A county, the latter was bound to contribute to B her portion of the debts thus paid.[131] Where the only provision in a statute organizing a new county from parts of others in reference to its liabilities because of the territory detached is that the property taken from these several counties respectively shall be subject to taxation "for the pro-rata proportion of any debts" due by the several counties, it subjects the county to a proportionate liability for debts, but not for contingent liabilities arising out of a breach of duty.[132]

§ 475. **Defenses to claims growing out of partition.**—Where a new county has been formed from another by an act providing that it should issue its pro-rata share of bonds for an indebtedness of its parent county to a third from which it was severed, for which it would

[130] Hempstead Co. v. Howard Co., 51 Ark. 344; s. c. 11 S. W. 478. See also, Phillips Co. v. Lee Co., 34 Ark. 240.

[131] Board &c. v. Board &c., 62 Miss. 325. Where Carter county, Kentucky, had issued bonds, and portions of its territory had been taken to form other counties by acts which provided that the citizens and property within the old limits should remain liable to taxation for the payment of those bonds as though "this act had never been passed," the parts of the county set off to form other counties which were interested in the bonds remained for the purposes of the debt a part of Carter county. A suit against it on account of the bonds is a suit against the parts set off, and a judgment against the county was held to be payable out of taxes collected within the boundaries of the original county: Carter Co. v. Sinton, 120 U. S. 517; s. c. 7 S. Ct. 650.

[132] Askew v. Hale Co., 54 Ala. 639.

receive its share of railroad stock issued to the original county in exchange for its bonds under the internal improvement laws of Florida, the depreciation of such railroad stock constitutes no valid reason for the refusal on the part of the new county to pay its proportion of the indebtedness.[133] Before a county from which a new one is formed can proceed to compel the latter to issue bonds for its pro-rata share of the bonded indebtedness of the former to the one from which it was formed, it must appear that the plaintiff county has issued and delivered its bonds for the whole amount to its parent county.[134] In the same case the fact that the new county was not a party to mandamus proceedings of the original county against the parent county was held not to affect its liability; and it was not precluded by a judgment in that case from showing the true amount of its liability in any proceedings of its parent county to compel the payment of its pro-rata share of the indebtedness to the original county. The court ruled, however, that a mere answer that a sum stated was not the correct amount was not sufficiently specific; that a return to an alternative writ of mandamus should, for the purpose of making an issue, set up a positive denial of the facts, or should state other facts sufficient to defeat relator's right. Under the Illinois statutes, providing that, when a portion of one town is taken therefrom and added to a second town, the second town shall bear a due proportion of the debts of the first town, to be apportioned by the supervisors and assessors of the two towns, a suit was brought for mandamus to compel the supervisors and assessors of the town receiving the addition to comply with the law, but this action was not commenced until more than ten years after the cause accrued. It was held that there was no such trust made out by the case as to prevent the bar of the statute of limitations.[135] This was a case simply involving private rights,—a matter of indebtedness between two corporations; no public rights were involved or the rule would have been different.[136]

[133] Canova v. State, 18 Fla. 512; the court saying that "the act . . . did not create an indebtedness and impose it upon [the new] county, but intended that its due proportion of the debt [due from the county of which it was formed to an original county from which this last was formed] should be paid by it as though there had been no division of the parent county."

[134] Canova v. State, 18 Fla. 512; reversing an order granting a mandamus.

[135] People v. Town of Oran, 121 Ill. 650; s. c. 13 N. E. 726, in which a proceeding to apportion the indebtedness of the old and the new town formed from it, of the bonded indebtedness of the former, was held barred by the statute of limitations, under which it should have been begun within five years from the time the right accrued.

[136] People v. Town of Oran, 121 Ill.

§ 476. Enforcement of obligations of old and new.—Under the acts severing a part of a county and creating of it new counties, with a provision that the new counties should compensate the old county according to the relative and pro-rata assessed valuation of the property in the territory detached, it was held neither necessary nor practicable to make the new counties parties in a proceeding against the old county to enforce collection of its bonds.[137] A county had received in exchange for its bonds, under the internal improvement act of Florida, an equivalent in shares of a railroad company. A new county was formed afterwards of a part of its territory. The new county issued its bonds, and upon delivery to the commissioners of the original county the latter duly assigned over to the commissioners of the new county shares of this railroad stock to equal the amount of the new county's bonds. It was held that this assignment transferred to the new county a proprietary interest in that stock, and that the county could enforce its right to have those shares transferred on the books of the railroad company whenever it was desired.[138] And the proprietary rights of the new county were not affected by the fact that the old county, after the assignment, had voted the whole number of the shares originally given to it for its bonds, which were still standing in its name: it had parted with its right of property and the new county had gained it.[139] The acceptance by a new county of its share of the railroad stock issued to the old county from which it was severed in exchange for its bonds, and the issuing of the bonds of the new to the old therefor, fixed upon the new county the liability for its bonds; and the supreme court of Florida ordered a peremptory mandamus to the officers of the new county to levy a tax to pay them.[140] Where by the error of the auditor-general the whole tax, after the division of its territory, has been paid by the old county, its remedy is by an action at law

650; s. c. 13 N. E. 726. See also, Piatt Co. v. Goodell, 97 Ill. 84; School Directors v. School Directors, 105 Ill. 653; in the first of which the rule is stated as "our [the court's] understanding of the law is, that as respects all public rights, or as respects property held for public use upon trusts, municipal corporations are not within the operation of the statute of limitations; but in regard to contracts or mere private rights the rule is different, and such corporations, like private citizens, may plead or have pleaded against them the statute of limitations."

[137] County Com'rs v. King, 13 Fla. 451.

[138] State v. County Com'rs, 21 Fla. 1.

[139] State v. County Com'rs, 21 Fla. 1.

[140] State v. County Com'rs, 21 Fla. 1. The respondent in this case filed several defenses, and asked that the issues be tried by a jury. The court denied the motion, holding that the issues in such matters were triable only by the court.

against the new county to recover the latter's proportionate share; and not by mandamus to compel a settlement between the respective boards of supervisors.[141] The legislature has power, upon the creation of a new county by division of an old one, to make special provisions for adjusting the debts and credits between them, and the enforcement of their respective claims; and they are not obliged to enforce such claims in the manner prescribed in general statutes.[142] A township can not divest itself of its liability to pay its indebtedness by altering its boundaries and changing its name.[143] The obligation of a new county to issue its bonds or to pay its debts in the manner provided in the act creating the same is not affected or controlled by subsequent constitutional or legislative enactment: the obligation of the contract can not be thus impaired.[144]

§ **477. Miscellaneous.**—When a new county is created out of a part of an old county, the old county takes the county property and becomes liable for the whole of the county indebtedness, in the absence of legislative provision to the contrary, and is therefore liable to pay the whole of the state levy of taxes charged upon the whole county at the time of the division.[145] An act of Texas authorized the organization of Reeves county out of a portion of the territory of Pecos county, but, owing to the delay of the commissioners and judges of Pecos county, such organization was not perfected until the lapse of several months; and meantime the inhabitants of that portion included in the new county paid taxes into the treasury of Pecos county. It was held that the delay of the officers of Pecos county to do their duty did not give Reeves county the right to recover such taxes from Pecos county.[146] In Wisconsin the county of M. was organized out of territory theretofore embraced in the county of O., and it was enacted that each county should be the exclusive owner of all real property within its boundaries, and that the treasurer of O. county should, upon demand by the treasurer of M. county, "assign to the county of M. all tax certificates in his office upon lands situated in the county of M." It was

[141] So held in Board &c. v. Board &c., 74 Mich. 721; s. c. 42 N. W. 170.

[142] Forest Co. v. Langlade Co., 76 Wis. 605; s. c. 45 N. W. 598.

[143] So held in Walnut Tp. v. Jordan, 38 Kan. 562; s. c. 16 Pac. 812; in which, after a city of the second class had been proclaimed as to a portion of a township, the city thereby detached from it was adjudged to be liable for its pro-rata share of warrants issued by the original township.

[144] Canova v. State, 18 Fla. 512.

[145] Gilliam Co. v. Wasco Co., 14 Or. 525; s. c. 13 Pac. 324.

[146] Reeves Co. v. Pecos Co., 69 Tex. 177; s. c. 7 S. W. 54; upon the principle that a new county organized out of a portion of the territory of an old one is not entitled to any funds nor subject to any obligations of the latter.

held that the act itself did not pass to M. county the legal title to tax certificates on lands in that county held by O. county, but that the legal title remained in the latter county until the assignment provided for was made.[147] The constitution of Colorado requires that each new county, on its establishment, shall be made responsible for a ratable proportion of the "then existing liabilities of the county or counties" from which it is formed. Two new counties were carved out of an old one, under acts providing for the enforcement of this mandate and that "all county records and other property" theretofore belonging to the old county should remain its property. They further provided for a tribunal to adjust and settle all matters of revenue proper to be done on account of the formation of the new counties, and to apportion the indebtedness of the old county. It was held that the new counties were not entitled to any part of the surplus funds of the old county.[148] On the division of a township into two townships, each is entitled to the public property which falls within its territorial limits; but, as to money and choses in action, the respective claims must be adjusted upon principles of equity, and the new township is entitled to a proportionate share of the funds realized from taxes, based on the amount of taxable property in the territory taken from the old township and the number of persons therein against whom a poll-tax was assessed, while it should receive a proportionate share of the special school-fund, based on the school enumeration of such territory.[149]

(b) DISSOLUTION.

§ 478. Dissolution—How effected in general.—In England a municipal corporation may be dissolved by an act of parliament;[150] by the loss of an integral part;[151] by a surrender of its franchises;[152] or

[147] Hall v. Baker, 74 Wis. 118; s. c. 42 N. W. 104.

[148] Washington Co. v. Weld Co., 12 Colo. 152; s. c. 20 Pac. 273.

[149] Towle v. Brown, 110 Ind. 65; s. c. 10 N. E. 626; following Johnson v. Smith, 64 Ind. 275. As to equity jurisdiction and adjustment upon equitable principles, see 1 Dillon Munic. Corp., §§ 173, 186, 189; Zartman v. State, 109 Ind. 360; s. c. 10 N. E. 94; Mount Pleasant v. Beckwith, 100 U. S. 514. As to rights of property in general, see 1 Dillon Munic. Corp. (3d ed.), § 188; Town of North Hempstead v. Town of Hempstead, 2 Wend. (N. Y.) 109; School Tp. &c. v. School Town &c., 109 Ind. 559; s. c. 10 N. E. 578.

[150] 2 Kyd Corp. 447; Coke Litt. 176, and note; Rex v. Amery, 2 T. R. 515; Glover Corp. 408; Angell & Ames Corp., § 767; 2 Kent Com. 305; Board &c. v. Cox, 6 Ind. 403; State v. Trustees &c., 5 Ind. 77.

[151] Rex v. Morris, 3 East 214; Rex v. Stewart, 4 East 17; Rex v. Pasmore, 3 T. R. 199; Reg. v. Bewdley, 1 P. Wms. 207; Banbury Case, 10 Mod. 346; Rex v. Mayor &c., 8 Mod. 127; Colchester v. Seaber, 3 Burr. 1870; Bacon v. Robertson, 18 How. 480; Smith v. Smith, 3 Dessaus. (S. C.) 557.

[152] Rex v. Osbourne, 4 East 326;

by forfeiture of its charter.[153] In the United States the law is different in some respects. Incorporated towns and cities being but arms and instrumentalities of the state government, creatures of the legislature, and subject to its control and will, it may, as it can establish, also abolish them at its pleasure.[154] The supreme court of California say: "And as a city may, by legislative enactment, spring from the body of the county, being the first subdivision of the territory and political power of the state, there is no reason in law why it may not be resolved back to its original elements, or why the power that has called this political being into existence may not again destroy it. There is no limitation on the power of the legislature in this respect, and economy and convenience may often require that an act incorporating a city should be repealed, and the inhabitants thereof placed in their original situation."[155]

§ 479. The same subject continued.—There is no constitutional restriction upon the power of the legislature to abolish municipal and county organizations in Kansas, and the existence of the power is not disputed and can not be doubted.[156] A municipal corporation is not dissolved by the failure to elect officers;[157] the existence of a corporation does not depend upon the existence of officers; the people have the right to elect them but they are mere agents of the people; the corporation might become dormant or be suspended by the removal of all the people from it, but the failure to elect officers while the right or capacity to elect them remains will not dissolve a corporation.[158] Wilson, Justice, in a dissenting opinion, discussing the

Rex v. Miller, 6 T. R. 268; Howard's Case, Hutton 86; Grant Corp. 306.

[153] Rex v. Grosvenor, 7 Mod. 198; Smith's Case, 4 Mod. 53, 55; Rex v. Saunders, 3 East 119; Rex v. Inhabitants &c., 13 East 220; Attorney-General v. Corporation of Shrewsbury, 6 Beav. 220.

[154] Williams v. Nashville, 89 Tenn. 487; s. c. 15 S. W. 364. See also, Luehrman v. Taxing Dist., 2 Lea (Tenn.) 425, and authorities there cited; State v. Wilson, 12 Lea (Tenn.) 290, 246; State v. Waggoner, 88 Tenn. 290; s. c. 12 S. W. 721; Cooley Const. Lim. 230, 231.

[155] People v. Hill, 7 Cal. 97, 103.

[156] So held in State v. Hamilton, 40 Kan. 323; s. c. 19 Pac. 723; approving and following State v. Osborne, 36 Kan. 530; s. c. 13 Pac. 850. See also, Division of Howard Co., 15 Kan. 194; In re Hinkle, 31 Kan. 712; s. c. 3 Pac. 531; State v. Meadows, 1 Kan. 90; Duncombe v. Prindle, 12 Iowa 1; Dillon Munic. Corp., §§ 46, 65.

[157] State v. Dunson, 71 Tex. 65; s. c. 9 S. W. 103; followed in Buford v. State, 72 Tex. 182; s. c. 10 S. W. 401, in which case the court declined to follow Lea v. Hernandez, 10 Tex. 137, where such facts were held to evidence a civil death—a dissolution of the corporation—although not expressly overruled in Blessing v. City of Galveston, 42 Tex. 641.

[158] 1 Dillon Munic. Corp. (4th ed.), § 166. See also, Bacon v. Robertson, 18 How. 480; Lowber v. Mayor &c., 5

power of a legislature to destroy a county, to prevent a misapprehension of the opinion of the Illinois court in Coles v. Madison County,[159] where such a power, by way of illustration, was conceded, says: "The only manner that occurs to my mind, by which a legislature can destroy a county, is by annexing it to one or more organized counties, No interregnum would then take place; the government of the county to which it was annexed would be extended over and embrace it simultaneously with its annexation; and thus no evil or inconvenience would occur."[160] A municipal corporation is not dissolved by an amendment of its charter which is unconstitutional in whole or in part, as to the election of officers; as the offices previously existed de jure, the persons holding them under the void law are de facto officers, and the organization continues.[161] The effect of a judgment of ouster on an information in the nature of a quo warranto against a municipal corporation and its officers is to immediately dissolve the corporation, whether it existed de jure or de facto, and work its dissolution, and take away all its rights, liberties, privileges and franchises;[162] a dissolution in this manner, as in the death of a natural person, operates as an absolute revocation of all power and authority on the part of others to act in its name or in its behalf.[163]

§ 480. **Surrender of charter.**—Judge Dillon thus states the doctrine: "Since all of our charters of incorporation come from the legislature a municipal corporation can not dissolve itself by a surrender of its franchise. The state creates such corporations for public ends, and they will and must continue until the legislature annuls or destroys them or authorizes it to be done."[164] As to the power of a municipal corporation to surrender any of its franchises,—for instance, the franchise of collecting tolls on freight passing over a certain channel connecting another bay with the bay upon which the city was situated,—it has been considered an extremely doubtful power; as not only

Abb. Pr. (N. Y.) 325; Clarke v. City of Rochester, 5 Abb. Pr. (N. Y.) 107; Welch v. Ste. Genevieve, 1 Dill. 130; Philips v. Wickham, 1 Paige Ch. (N. Y.) 590; Commonwealth v. Cullen, 1 Harris (Pa.) 133; President &c. v. Thompson, 20 Ill. 197; Rose v. Turnpike Co., 3 Watts (Pa.) 46; People v. Wren, 5 Ill. 269; Brown v. Insurance Co., 3 La. An. 177; Green Township, 9 W. & S. (Pa.) 22; Vincennes University v. Indiana, 14 How. 268; Muscatine Turnverein v. Funck, 18 Iowa 469; Schriber v. Town of Langdale, 66 Wis. 616; s. c. 29 N. W. 547, 554.

[159] Breese (Ill.) 154.

[160] People v. Wren, 5 Ill. 269, 279. Holt, C., in Walnut Tp. v. Jordan, 38 Kan. 562, 565; s. c. 16 Pac. 812, quotes this and highly commends the doctrine.

[161] Cole v. Black River Falls, 57 Wis. 110; s. c. 14 N. W. 906.

[162] Dodge v. People, 113 Ill. 491; s. c. 1 N. E. 826.

[163] Dodge v. People, supra.

[164] 1 Dillon Munic. Corp. (4th ed.), § 167. See also, Idem, §§ 37, 43, 54.

the corporation but a large portion of the state's population residing without the city's limits as well as of the commercial world were interested.[165] Towns incorporated under the general law of Missouri can be disincorporated only in the manner therein authorized.[166] A charter granted by the legislature to a municipal corporation must be surrendered to and accepted by the legislature. Where, therefore, a town formerly incorporated was reincorporated under a general law, this was held not to amount to an effectual surrender of the charter: it should have been accepted and a record made of this fact; the action of the county court extending the limits of the corporation in proceedings to reincorporate was a mere amendment of the charter.[167]

§ 481. The same subject continued.—The Ohio revised statutes provide the mode by which municipal corporations may surrender their municipal powers. It has been held that upon the presentation of a petition to the council for an election upon the question of surrender it was the duty of the council before taking action thereon to satisfy itself that it contained the requisite number of qualified petitioners, and for that purpose they might refer the same to a committee to make the requisite examination. Before an election is ordered petitioners may withdraw their names, and if thereby the number is reduced below the number required, the council should refuse to order an election. *Query,* if an election had been ordered, whether they could withdraw their names. In a mandamus proceeding to compel a council to order an election, whether there has been a petition with the requisite number of signers presents an issue not of right triable by a jury, and an appeal properly lies from the judgment of the common pleas thereon.[168] In Ohio, an act "to provide for the organization of cities and incorporated villages," in its first section repealing "all laws" then "in force for the organization or government" of municipal corporations, was held not to annihilate the old corporations; it recreated them; it was a reorganization, not a dissolution; neither their corporate existence nor corporate identity was affected by it. Some of them took, under its operation, a different legal designation,—as, in-

[165] Morris v. State, 65 Tex. 53.

[166] So held in Hambleton v. Town of Dexter, 89 Mo. 188; s. c. 1 S. W. 234, where the effect of reincorporation under this law was held not to have disincorporated the old town, because there was no notice given as required by the law; neither did the order of the county court attempt or undertake to dissolve the old corporation; nor did the law authorize the incorporation of a new town out of a part of the inhabitants and territory already incorporated.

[167] Norris v. Mayor &c., 1 Swan (Tenn.) 164.

[168] Dutten v. Village of Hanover, 42 Ohio St. 215.

corporated villages instead of towns; the particular mode of their organization was somewhat changed, and their powers, privileges, rights and duties were restricted, enlarged or modified; but their territorial limits remained the same as before; legal obligations incurred by or to them remained unchanged.[169] There is no method provided, under the Idaho statutes defining the power of town trustees, whereby they can dissolve the corporation or effect a disincorporation, and it is not within their power to abandon such incorporation and procure a reincorporation; therefore, the acts done by a board of trustees of a lawfully incorporated town in an attempt to abandon or disincorporate such municipality, and set up a new government, were held to be without authority of law, and void.[170]

§ 482. **Florida decisions on constitutionality of acts to dissolve.**— The Florida statute which provided a mode for dissolution of municipal corporations owing bonded debts was held unconstitutional in that its object was not solely to dissolve, but manifestly to reincorporate at once, and by this mode of reincorporation by vote of a certain number of bondholders and citizens leading up to an appointment of the officers of the municipality by the governor of the state, it departed from the usual rule as to such bodies, and was in contravention of that provision of the constitution which provides that "the legislature shall establish a uniform system of county, township and municipal government."[171] "An act to dissolve" municipal corporations under circumstances therein stated "and to provide provisional governments for the same," providing that "whenever any city or town incorporated under the general municipal-corporation act * * * is indebted to the amount of $200,000, and has defaulted and still defaults in the payment of its interest account, the charter of such city or town shall be, and is hereby declared to be, repealed and the incorporation thereof dissolved," was held not to be a special law within the prohibition of the constitution, but a general law; the fact that

[169] State v. Mayor &c., 14 Ohio St. 472.

[170] People v. Bancroft, 2 Idaho 1077; s. c. 29 Pac. 112.

[171] State v. Stark, 18 Fla. 255; giving a judgment of ouster against the mayor of Fernandina appointed by the governor under this act, and virtually holding that the attempted dissolution in the mode provided therein of the original city was void; the court especially wishing it understood that they "do not decide or hold that the legislature can, under the constitution, authorize the holders of one-half of the bonds of an indebted municipal corporation to dissolve such corporation;" nor to say "that the act, stripped of the discretion vested in the bondholders, would be constitutional."

there may have been but one municipality of the class named at the time of the approval of the act not of itself rendering the statute creating this class special and unconstitutional.[172]

§ 483. **Vacated towns.**—Where a town had recovered a judgment in a suit and was afterwards vacated and abolished, the ordinance providing that the town to which it was to be attached should be the successor to the vacated town in its actions at law, the ownership of such judgment became entirely vested in the last town.[173] It was contended also that the board of supervisors of the county had no authority to make any distribution of the property of the county, and that so much of the ordinance abolishing this town and making the one of which it was constituted a part of its successor as the owner of this judgment was void. It was held that under the constitution, which empowers the legislature to confer upon boards of county supervisors "powers of a local legislative and administrative character," when any subject of legislation is intrusted to county boards by general words in a statute they acquire a right to pass any ordinance necessary or convenient for the purpose of disposing of the whole subject so committed to them, and for that purpose have all the powers of the state legislature over that subject, unless the statute restricts the power or directs its exercise in a certain way.[174] And

[172] Ex parte Wells, 21 Fla. 280; the court summing up its conclusions as follows:—"Unless there is a limitation in the constitution restraining the legislature, it can at will dissolve one city or many municipalities and leave others in existence. It could, moreover, dissolve all existing municipalities and prevent the same communities from reorganizing, yet provide for others to incorporate. . . . The legislature has not pretended to either compel communities to organize as municipalities, nor when so organized to remain such, but has expressly provided for surrender of its franchises by any city or town. We are not satisfied that, having the power to authorize one or many to surrender its corporate existence, it can not for satisfactory cause dissolve any one of them. The legislature, in repealing or modifying the charter of a municipality, is not creating rules for the regulation of future controversies between parties, it is simply, as it were, shaping its own instrumentality. . . . Municipal corporations can, independent of constitutional limitations, be dissolved without violating the principle suggested for petitioner." The principle referred to was that "it [the statute] does not prescribe a rule of civil conduct," but deals only with the past and present, and not with the future.

[173] Supervisors &c. v. O'Malley, 47 Wis. 332; s. c. 2 N. W. 632.

[174] Supervisors &c. v. O'Malley, 47 Wis. 332; s. c. 2 N. W. 632; holding also, that under revised statutes, § 670, the county board had power to abolish an existing town, attach different parts of its territory to other existing towns and provide that one of the latter should succeed to the rights of the old town in specified

when substituted in such suits the successor is entitled to costs.[175]

§ 484. **This was no dissolution.**—The qualified electors of a corporation in Texas elected a city council known to be in favor of dissolution, which, at a regular meeting in the year of their election, made a full, complete and permanent settlement of all corporate business with a view to its dissolution; when they resigned, after unanimously passing an ordinance declaring the several municipal offices forever thereafter vacant. It was held that the only law relating to the dissolution of municipal corporations by their own action was the act authorizing cities of a certain population to accept its provisions in lieu of any existing charter by a two-thirds vote of the council, and on compliance with certain requirements; and that this attempted dissolution by vote of the mayor and aldermen, and a subsequent incorporation under laws relating to unincorporated towns and cities, was void. And being void, dissolution could not be presumed from acquiescence and lapse of time. The court, on the argument that the dissolution of the corporation should be presumed from the period of time which had elapsed since the city had acted under its original charter, said "that presumptions can not be indulged in opposition to facts which show that the fact sought to be established by presumption can have no existence."[176] In a similar case it was held that as a municipality could not at will abandon its special charter and reorganize under general laws, a corporation under a special charter, whose officers had been ousted, was not dissolved by its failure to elect new officers, nor by an attempt to reorganize it under the general laws of the state.[177]

§ 485. **Effect of dissolution as to liabilities and funds in hand.**—Where a road district had been incorporated from a portion of a township with power to contract debts for certain purposes, and had done so, and was afterwards dissolved by a repeal of its charter with a provision that the repeal should not in any way impair any legal contracts which its board of commissioners had made and which might remain unexecuted, it has been held that it was the intention of the legislature to impose upon the township committee the liabilities which the commissioners had legitimately contracted within the scope of their duties and for the object of their appointment. Such are claims for

property—in this case a judgment against third parties. The appeal in this case was dismissed because the successor (town of Butternut) had not been substituted and the appeal taken in its name.

[175] Town of Butternut v. O'Malley, 50 Wis. 333; s. c. 7 N. W. 248.

[176] Largen v. State, 76 Tex. 323; s. c. 13 S. W. 161.

[177] Welch v. Ste. Genevieve, 1 Dill. 130.

compensation, etc., of the surveyor and his assistants, for services of a clerk and for sewer-pipe for use in making improvements.[178] The repeal of an act incorporating a portion of a township as a polling-district dissolves such a government corporation and abolishes its officers. The result is that any funds in the hands of its treasurer, raised by taxation for public purposes, come immediately under the control of the legislature; and in obedience to its direction by the general laws applicable in such cases, it is the duty of that treasurer to pay over to the proper officer of the township from which this polling-district was formed whatever he has in hand.[179] An act of the legislature of Alabama to vacate and annul the charter of and dissolve a municipal corporation was held to operate a dissolution of the corporation—a withdrawal from it of all governmental power which had been confided to it, except so far as the act authorized the continued exercise of such power; but upon debts and liabilities which had been created or contracted by the corporation in the exercise of a power with which it had been clothed by the general assembly it was without operation; these debts or liabilities were not lessened in obligation nor extinguished; nor was it within the competency of legislative power to lessen them in obligation or to extinguish them.[180] The supreme court of New Mexico has construed its disincorporating act, as it may be styled, and held that the effect of its sections providing for a settlement of the debts of a disincorporated city was to make of the county a mere auditing and collecting agent for the creditor of a defendant municipal corporation, empowered to make by special tax out of the assets of the dead city, in the manner prescribed, a sufficient amount to discharge all claims duly presented and allowed, and not to transfer the liability of the city to the county.[181]

§ 486. **Effect of dissolution upon liabilities.**—The legislature, in the exercise of its supreme power over municipal corporations, may

[178] Union Tp. v. Rader, 41 N. J. L. 617.

[179] Heckel v. Sandford, 40 N. J. L. 180.

[180] Amy v. Selma, 77 Ala. 103.

[181] Board &c. v. Pierce, 6 N. Mex. 324; s. c. 28 Pac. 512, where it was held that the plaintiff could not recover of the county because he had not followed the provisions of the disincorporating act in the presentation of his claims, etc.; and that the claims were barred by reason of not having been presented within six months from the time the city of Las Vegas was discorporated. Laws of New Mexico, 1884, ch. 38, provide for disincorporation of cities, and § 3 declares that the commissioners of the county in which such cities are situated shall audit claims against such cities, and that persons having such claims shall present them within six months and not afterwards. Section 6 provides for publishing notice to claimants and issuing warrants for amounts allowed. Section 9 provides

repeal their charters at any time, in its discretion. The only limitation on the operation of such a repeal is as to creditors,—that it shall not operate to impair the obligation of existing contracts, or deprive them of any remedy for enforcing such contracts which existed when they were made.[182] In a case, therefore, where a part of a township had been incorporated for the purpose of laying out, opening and improving streets, with full power through its commissioners to borrow money, issue bonds, etc., but owning no property, and debts had been incurred in accordance with the statute incorporating it, and this charter was repealed and the corporation thereby dissolved, the act of repeal was held constitutional, inasmuch as it preserved the debts and imposed upon the authorities of the township the duties of the commissioners of the dissolved corporation as to assessment, and other steps for compromise, adjustment and settlement of those claims.[183] Upon the contention that the act of the legislature of Alabama dissolving the old corporation of "The City of Selma" and reincorporating it as "Selma" was in contravention of the constitution of the state, in that it impaired the obligation of contracts "by destroying or impairing the remedy for their enforcement," the act was sustained; the court stating its conclusion as follows: "An act to dissolve a municipal corporation is not objectionable so far as it authorizes the appointment of commissioners with authority to take charge of, collect and control the assets of the dissolved corporation, making of them the application required by law. Nor is it objectionable so far as it names a court and authorizes the commissioners to apply on the equity side of that court for instruction, direction and protection in the performance and discharge of their duties. Nor is it objectionable so far as in this respect it may be considered a grant of jurisdiction to said court, nor in the mode of procedure which it prescribes."[184] A township by act of the legislature was converted into a city. By subsequent act of repeal the later corporation was dissolved. It was held that the effect of the dissolution of the city, it embracing the same inhabitants and the same boundaries, was to revive the township municipality, to cast upon it the ownership of the municipal property, and to make it liable for the debts of the city, and that the suit was

that approved accounts shall be presented within four months from the date of notice and not afterwards.

[182] Rader v. Southeasterly Road Dist., 36 N. J. L. 273; People v. Morris, 13 Wend. (N. Y.) 325; State v. Branin, 23 N. J. L. 484; President &c. v. Society &c., 24 N. J. L. 386; Von Hoffman v. City of Quincy, 4 Wall. 535; Butz v. City of Muscatine, 8 Wall. 575.

[183] Rader v. Southeasterly Road Dist., 36 N. J. L. 273.

[184] Amy v. Selma, 77 Ala. 103.

properly brought against the township for a debt incurred by the city.[185]

§ 487. **What does not affect liabilities and remedies.**—Even if a municipal corporation can forfeit its franchises by non-user, such forfeiture will not operate to extinguish debts of the corporation contracted before the forfeiture was incurred or declared. Furthermore, if corporate creditors are not made parties to the proceeding by which the forfeiture is ascertained and declared, they are not bound by the judgment of ouster. Municipal corporations can not extinguish their debts by changing their names or reorganizing under new charters, or by failing to exercise their corporate powers; a debt once contracted by a municipal corporation will survive as a debt against whatever corporate entity is subsequently created to take its place and exercise its power of local government over substantially the same people and territory.[186] The legislation of Tennessee, in repealing the charters of cities and providing subsequently for compromise of their debts by the "taxing-districts" formed in their stead, and the attempts (as generally construed) to force this by withholding the power to tax to meet the obligations of the dissolved corporations, has had much attention in the courts. It has been held that any power of taxation, provided as a means of paying their debts, theretofore granted to the original municipalities, devolved as readily as the obligation to pay them, and by operation of the federal constitution, upon those successors, notwithstanding the attempted statutory prohibition. As a sequence, a mandamus might be issued to the officials appointed for the general purposes of the local government, who can exercise the power of taxation, which was in the inhabitants of the given territory and which was never taken away, as they do all governmental

[185] Scaine v. Inhabitants &c., 39 N. J. L. 526; the court saying:—"The legal inference must be that it was the intention of the legislature, by the repeal of the city charter, not so much to abolish the government of the district in question, as to alter its form. The charter was revoked, but there was no interregnum, for the township organization instantly revived and took its place, the repeal and revival being accomplished uno flatu. The object of the city charter was not abandoned; that object was local government; and to effect this the change made was the substitution of other instrumentalities."

[186] Hill v. City of Kahoka, 35 Fed. 32; holding the city of Kahoka liable for bonds in aid of railroads issued by the town of Kahoka, the charter of which had been forfeited for non-user, and the last corporation formed of the same inhabitants and territory; following Broughton v. Pensacola, 93 U. S. 266; Mobile v. Watson, 116 U. S. 289; s. c. 6 S. Ct. 398; Laird v. City of De Soto, 22 Fed. 421; People v. Murray, 73 N. Y. 535; the last as to judgment of ouster not binding those not parties.

power of that local character.[187] It was also held that where a state, with the deliberate purpose of obstructing a creditor, repeals a municipal charter, whereby there is no organization to be sued, and the creditor is disabled from proceeding, the time of such obstruction will be excluded from the limitation of the statute, the legislative intention to suspend it being implied as in case of war. Besides, it may be set up as an equitable defense in proceedings by mandamus.[188]

§ 488. **Repealing charters.**—The legislation of Tennessee repealing the charters of municipal corporations and establishing taxing-districts was the most extensive in this direction that has ever been resorted to in the United States. There has been much litigation growing out of it and important decisions made upon the questions raised in the various cases. We will present here some of the most important rulings of the supreme court of the state upon the constitutionality of those acts. First on the title of the act. It was held that "An act to repeal the charters of certain municipal corporations and to remand the territory and inhabitants thereof to the government of the state" is not rendered unconstitutional by a provision that the property used by such corporation for municipal purposes is transferred to the custody and control of the state to remain public property for the uses to which it has been hitherto applied.[189] And "A bill to establish taxing-districts in this state and to provide the means of local government for the same," which grants municipal franchises to the communities within the territorial limits of the taxing-districts, and gives to the corporation thus created all the necessary legislative, judicial and police powers of an incorporated city, and contains specifications of offenses committed against the corporation or by its officials with penalties and punishments, contains only one subject within the meaning of the constitution.[190] An act which provides "that the several communities embraced in the territorial limits of all such municipal corporations in the state as have had or may have their charters abolished, or as may surrender the same under the provisions of the act, are hereby created taxing-districts, in order to provide the means of local government for the peace and safety and gen-

[187] Devereaux v. City of Brownsville, 29 Fed. 742; Loague v. Taxing Dist. &c., 29 Fed. 742.

[188] Cases cited in the preceding note. See also, as to the effect of being disabled to sue, Hanger v. Abbott, 6 Wall. 532; United States v. Wiley, 11 Wall. 508, 513; Braun v. Sauerwein, 10 Wall. 218; Montgomery v. Hernandez, 12 Wheat. 129, 134. As to equitable defense, see Angell & Ames Corp. (11th ed.), §§ 715, 721; High Extr. Rem. (2d ed.), §§ 14, 457 et seq.

[189] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425.

[190] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425.

eral welfare of such district," and further provides for the surrender of all charters of municipal corporations in the state to enable the communities within their limits to be governed by the new act, is in form a general law and can not be held to be intended as a special law, even if the courts can inquire into the intention of the legislature, although mainly framed or designed for a particular locality, where the acts of the same session of the legislature show a repeal of the charters of thirty-seven municipal corporations, all of whose communities fall at once within the provisions of the act.[191]

§ **489. The same subject continued.**—The supreme court of Tennessee held an act constitutional which repealed the charter of a single municipal corporation, upon the principle that municipal corporations are within the absolute control of the legislature, and may be abolished at any time in its discretion.[192] They further held that an act which grants municipal franchises to the communities within the territorial limits of certain districts in order to provide the means of local government, and creates the "agencies and governing instrumentalities" of a municipal corporation, with the usual legislative, executive and judicial powers, although it may style the creations "taxing-districts," in reality organizes the people and territory of the district into municipal corporations.[193] It was competent for the legislature, in the act creating taxing-districts of these dissolved corporations, to provide for the appointment of provisional officers to hold for a reasonable time, and not have them elected by the people

[191] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425.

[192] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425. Cooper, J., gives this as the obvious reason:—"Being created as instrumentalities or arms of the government, they can not be continued in that capacity whenever the public exigency, of which the legislature alone is judge, demands that they should cease to act." See also, People v. Morris, 13 Wend. (N. Y.) 325, 331; City of Memphis v. Memphis Water Co., 5 Heisk. (Tenn.) 495, 527; Governor v. McEwen, 5 Humph. (Tenn.) 241; McCallie v. Mayor &c., 3 Head (Tenn.) 317; Lynch v. Lafland, 4 Coldw. (Tenn.) 96. In another place he speaks of the power to repeal charters as follows:—"This is a power so essential to sovereignty and the preservation by the state of its control over its instrumentalities of local rule, that it can not well be considered as cut off except by a positive provision to that effect. The restriction is against the powers of a corporation being 'diminished' by special laws, not against their entire abolishment. And we may conceive of cases where, by the vicissitudes of trade, as in the case of old Sarum in England, and some of the mining towns of California, the special repeal of a particular charter might be demanded by public policy when a general repeal would be a remedy worse than the disease."

[193] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425.

of the district; this was merely to put the new system in motion.[194] So also, the legislature in this state could reserve to itself the right to impose directly the necessary taxes for the support of municipal corporations.[195]

§ 490. **Receiver for a city.**—The United States circuit court on a bill filed by the bondholders of the city of Memphis appointed a receiver for the city, and ordered a surrender of the property and assets of the city, and the receiver asked an injunction afterwards against the officer appointed under the laws of Tennessee for the taxing-district of Shelby county to receive this property and these assets in order that the same might be administered by the court as a court of equity through its officer. The supreme court of the United States on appeal gave the subject full consideration. The court was agreed upon the propositions which follow: Upon the repeal of the charter of a city, property held for public uses, such as public buildings, streets, squares, parks, promenades, wharves, landing places, fire-engines, hose and hose-carriages, engine-houses, engineering instruments, and generally everything held for governmental purposes, passes under the immediate control of the state, the power once delegated to the city in that behalf having been withdrawn.[196] Nor could the decree of the court below, so far as it subjected to the payment of the debts of the city the private property of all persons within its territorial limits, be sustained.[197] But whatever property a municipal corporation holds subject to the payment of its debts will, after its dissolution, be administered for the benefit of the creditors of such a corporation, and applied by a court of equity. Private property of the corporation such as it holds in its own right for profit or as a source of revenue not charged with any public trust or use, and funds in its possession unappropriated to any specific purpose, may be so administered. In this respect the position of the extinct corporation is not dissimilar to that of a deceased individual; it is only such property as is possessed free from any trust, general or special, which can go in liquidation of debts.[198] The majority of the court reversed the court below, and held that as it involved the power of the court to levy taxes

[194] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425. The court in the foregoing case rely largely upon Judge Cooley's opinion in People v. Hurlbut, 24 Mich. 44.

[195] Luehrman v. Taxing Dist. &c., 2 Lea (Tenn.) 425.

[196] Meriwether v. Garrett, 102 U. S. 472. See also, Schaffer v. Cadwallader, 36 Pa. St. 126; City of Davenport v. Peoria &c. Ins. Co., 17 Iowa 276; Askins v. Commonwealth, 1 Duv. (Ky.) 275; President &c. v. City of Indianapolis, 12 Ind. 620; Lowe v. Board &c., 94 Ind. 553.

[197] Meriwether v. Garrett, 102 U. S. 472.

[198] Meriwether v. Garrett, supra.

the appointment of the receiver could not be sustained. It was their judgment that taxes levied according to law before the repeal of a charter of a city other than such as were levied in obedience to the special requirement of contracts entered into under the authority of law, and such as were levied under judicial direction for the payment of judgments recovered against such city, can not be collected through the instrumentality of a court of chancery at the instance of the creditors of the city.[199]

§ **491. The same subject continued.**—Upon the contention that the creditors of the city of Memphis would be remediless if the federal courts did not come to their relief as to the taxes levied before the repeal of its charter, Field, Justice, says: "But the conclusion does not follow. The taxes levied pursuant to writs of mandamus issued by the circuit court are still to be collected, the agency only for their collection being changed. The receiver appointed by the governor has taken the place of the collecting officers of the city. The funds received by him upon the special taxes thus levied can not be appropriated to any other use. The receiver, and any other agent of the state for the collection, can be compelled by the court, equally as the former collecting officers of the city, to proceed with the collection of such taxes by the sale of property or by suit, or in any other way authorized by law, and to apply the proceeds upon the judgments."[200] Justices Strong, Swayne and Harlan dissented, holding that the complainants were entitled to some of the relief granted them in the decree. A case was made in their opinion for the appointment of a receiver to take into the possession of the court those taxes which had been levied by judicial direction for the payment of judgments recovered against the city—taxes which had been only partly paid. They placed this upon the principle that a trust had been created with which those taxes had been charged; that the creditors were cestuis que trustent—the city having only the naked title to this fund; that the city had been, in its neglect to collect and apply these taxes, a faithless trustee, and the court, as in other cases of individual trustees, in this of a municipal corporation as trustee, could and should appoint another.[201] Further, Justice Strong said, on page 528:

[199] Meriwether v. Garrett, 102 U. S. 472. See also, as to taxes and power of court to collect, City of Augusta v. North, 57 Me. 392; City of Camden v. Allen, 26 N. J. L. 398; Perry v. Washburn, 20 Cal. 318; City of Philadelphia v. Greble, 38 Pa. St. 339; Howell v. City of Philadelphia, 38 Pa. St. 471; Rees v. City of Watertown, 19 Wall. 107, 116; Heine v. Levee Com'rs, 1 Woods 246; s. c. 19 Wall. 655.

[200] Meriwether v. Garrett, 102 U. S. 472, 520.

[201] Meriwether v. Garrett, 102 U. S. 472, 527. Justice Strong said, speaking of the city:—"Its character as [a municipal corporation] does not af-

If the city, as contended, by the legislative act of repeal of its charter "ceased to have any legal existence, * * * the case then became one of a trust without a trustee, pre-eminently fit for equitable interference. A court of equity will not permit a private trust to fail for want of a trustee. And this rule is applicable to cases in which a municipal corporation has been nominated the trustee."[202]

§ 492. **Where such a receiver was appointed.**—There has been an instance in which a receiver was appointed for a city, a history of which we will give. When the city of Nashville, Tennessee, had been in 1869 brought to the verge if not to a state of bankruptcy by reckless issuing of money obligations and wasteful mismanagement and fraudulent uses of its finances on the part of its regularly elected officials, there was an attempt to have a receiver appointed through a bill filed by citizens and creditors. The first chancellor dismissed the application. On a second application before another chancellor they were more successful and a receiver was appointed. A third chancellor, on application before him to discharge the orders of the second chancellor, approved the action of his predecessor in intervening to annul the operation of the charter of the city. There was extended the old rule that in meeting emergencies for which the law has provided no remedies, equity will interpose. Judge East, the chancellor, ascribed to the government of a city a twofold character: first, as an arm of the legislature; secondly, as a private corporation, the creation of the legislature. Among other things he said: "The functions of a municipality are twofold; first, political, discretionary, legislative; secondly, ministerial. While acting within the sphere of the former they are exempt from liability, inasmuch as the corpo-

fect the nature of its obligations to its creditors or its cestuis que trust, or impair the remedies they would have if the city was a common debtor or trustee. While as a municipal corporation the city had public duties to perform, yet in contracting debts authorized by the law of its organization, or in performing a private trust, it is regarded by the law as standing on the same footing as a private individual, with the same rights and duties and with the same liabilities as attend such persons. Over its public duties, it may be admitted, the legislature has plenary authority. Over its private obligations it has not." See also, Bailey v. Mayor &c., 3 Hill (N. Y.) 531; Small v. Inhabitants &c., 51 Maine 359; Oliver v. City of Worcester, 102 Mass. 489.

[202] See also, Girard v. Philadelphia, 7 Wall. 1; Philadelphia v. Fox, 64 Pa. St. 169; Town of Montpelier v. Town of East Montpelier, 29 Vt. 12; Batesville Institute v. Kauffman, 18 Wall. 151, where it is said:—"It is, however, within the power of a court of equity to decree and enforce the execution of the trust through its own officers and agents, without the intervention of a new trustee;" citing Story Eq. Jur. 976–1060.

ration is a part of the government to that extent, and its officers to the same extent are public officers, and as such entitled to the protection of this principle; but within the sphere of the latter (ministerial duties) they drop the badges of governmental officers and become, as it were, the representatives of a private corporation in the exercise of private functions. The distinction between those legislative powers which it holds for public purposes as a part of the government of the country and those private franchises which belong to it as a creature of the law is well taken." The receiver appointed administered the affairs of the city, receiving its revenues and disbursing the same to whomsoever entitled until there was a change of administration, a restoration of home rule, and the city's representatives by act of the legislature issued bonds with which to compromise and settle the fraudulent debt imposed upon it by a band of scheming conspirators; never, however, in any of its actions conceding the justice or propriety of paying one dollar of that debt. This ended the receivership of the city of Nashville.[203]

[203] Lucius S. Merriam, Esq., in 25 Am. L. Rev. 393.

CHAPTER XIV.

ORDINANCES AND BY-LAWS.

SECTION

493. Introductory.
494. By-laws, ordinances and resolutions.
495. Distinction between ordinance and resolution.
496. The same subject continued—Illustrations.
497. The province of ordinances.
498. Power to make ordinances.
499. The same subject continued.
500. By whom the power is to be exercised.
501. Validity generally.
502. Validity in respect of form—(a) Meeting of council.
503. (b) The same subject continued.
504. (c) Quorum and votes.
505. (d) The same subject continued.
506. (e) Mode of enactment.
507. (f) The same subject continued.
508. (g) The signing of the ordinance.
509. (h) The same subject continued.
510. The veto power.
511. (i) Publication of the ordinance—When mandatory.
512. (j) The same subject continued—When directory.
513. (k) The same subject continued—Amendments and re-enactments.
514. (l) Manner of publication.
515. (m) The same subject continued.
516. (n) Time and proof of publication.
517. (o) Title of the ordinance.
518. (p) Record of the ordinance.
519. Validity in respect of matter—(a) Constitutionality.
520. (b) The same subject continued.
521. (c) Consistency with statute and charter.
522. (d) The same subject continued.
523. (e) Consistency with general penal law.
524. (f) The same subject continued.
525. (g) Reasonableness of the ordinance.
526. (h) The same subject continued—Illustrations.
527. (i) The same subject continued—Reasonableness a question of law.
528. (j) Vagueness of the ordinance.
529. (k) Ordinances void for want of notice.
530. (l) Ordinance granting arbitrary power.
531. (m) Ordinance delegating power.
532. (n) Ordinances which are contracts.
533. (o) Ordinances as to improvements—Valid.
534. (p) Ordinances as to improvements—Invalid.
535. (q) Miscellaneous ordinances—Valid and invalid.
536. (r) Jurisdictional matters in relation to ordinances.
537. (s) Curative ordinances.
538. (t) Scope, force, effect, etc., of ordinances.

SECTION
539. Motives of council not to be impeached.
540. Construction of ordinances.
541. The same subject continued—Miscellaneous.
542. Ordinances void in part.
543. Amendment and repeal — By subsequent ordinance.
544. Repeal by act of the legislature.
545. Repeals by implication.
546. Power to impose penalties.
547. Mode of enforcement of ordinances—By a purely civil action.
548. Jurisdiction of proceedings.
549. Imprisonment in default of payment of fine.
550. Imprisonment as a penalty.
551. Forfeitures.
552. The same subject continued.
553. Cumulative fines and fines for continuous and repeated offenses.
554. Enforcement by complaint—Nature of the proceeding.
555. The complaint—General requisites.
556. The same subject continued—Pleading.
557. Pleading further considered.
558. Proof of ordinances.
559. Right to trial by jury.
560. The same subject continued.
561. Certiorari and habeas corpus.

§ **493. Introductory.**—The public corporation in its usual acceptation, excluding the state and the federal governments, is for some purposes a miniature state. Its council represents the state legislature and the ordinances of that council represent the statutes of the state. These ordinances, if valid, have, as we shall see, upon those subject to the control of the corporation, the same force and effect that the general statutes of the state have upon the people at large. It is easy to see, therefore, the great importance of the subject which it is proposed to discuss in this chapter. Of the cases concerning public corporations it is probable that those which relate to municipal ordinances are more numerous than those which touch upon any other single point.[1] The validity of the ordinance is generally the point in question, and consequently by far the greater portion of the chapter is devoted to the discussion of the various questions which determine the validity of a particular ordinance. These questions are grouped under two heads: (1) validity in respect of form; (2) validity in respect of matter. It will be found that while an ordinance has, if valid, the force and effect of a general law upon those persons who are within the jurisdiction of the council, still the powers of the council are naturally very much more circumscribed than are those of the legislature, and that an ordinance must be most carefully examined both in respect of its form and in respect of its matter before it can be pronounced undoubtedly valid.

§ **494. By-laws, ordinances and resolutions.**—The by-laws of a municipal corporation are usually known as ordinances, while in the

[1] For a further treatment of the subject see the chapter on The Police Power in vol. 2.

English cases and text-books the former term is generally used.[2] There is, therefore, little if any distinction between the by-laws and the ordinances of a municipal corporation. The terms in their ordinary sense imply one and the same thing.[3] A resolution is generally of a more special and temporary character than an ordinance, and requires less solemnity of enactment.[4] Where a power is to be exercised by a municipality, and particularly if it is legislative in its nature, it must be done by ordinance, a mere resolution not being sufficient.[5] But where there is no law prescribing whether a license shall be by ordinance or resolution, it may be by resolution, and especially if the act is a ministerial act rather than legislative.[6] An office created by ordinance can not be abolished by resolution.[7] And, as a rule, an ordinance can not be changed by a resolution.[8] It is not material whether an ordinance required to be submitted to the electors is submitted by an ordinance or a resolution, provided the latter has all the essentials of an ordinance.[9] And it has been held that an election may be called by a resolution as well as ordinance.[10] Concerning the power of veto of resolutions, by the mayor, where the express power to veto resolutions is not given, it would seem clear that if the resolution is, in effect, an ordinance the right of veto exists, as where a resolution transfers money from one fund to another.[11]

§ 495. Distinction between ordinance and resolution.—All legislative and permanent acts regulating the affairs of the corporation should be in the form of ordinances and not in the form of resolutions. Thus, the issuing of bonds to aid in constructing a sewer would be a

[2] Beach Priv. Corp., § 510; Bac. Abr., tit. By-law. See Sumley By-laws, ch. 1; Gosling v. Veley, 19 L. J. (N. S.) Q. B. 111, 135, per Parke, B.

[3] National Bank &c. v. Town of Grenada, 44 Fed. 262; Bills v. City of Goshen, 117 Ind. 221, 225; s. c. 20 N. E. 115; 3 L. R. A. 261.

[4] A resolution is an order of council of a special and temporary character; an ordinance prescribes a permanent rule of conduct or government: Blanchard v. Bissell, 11 Ohio St. 96, 103; State v. City of Bayonne, 35 N. J. L. 335.

[5] City of Westport v. Mastin, 62 Mo. App. 647.

[6] Babcock v. Scranton Traction Co., 1 Lack. Leg. N. (Pa.) 223. Thus a franchise is granted by an ordinance, but a contract based upon a consideration in relation to the same subject-matter may be by resolution: State v. Cowgill &c. Mill Co., 156 Mo. 620; s. c. 57 S. W. 1008. A resolution is as effective as an ordinance in the absence of a statute: Brady v. City of Bayonne, 57 N. J. L. 379; s. c. 30 Atl. 968.

[7] City of San Antonio v. Micklejohn, 89 Tex. 79; s. c. 33 S. W. 735.

[8] Hisey v. City of Charleston, 62 Mo. App. 381.

[9] Crebs v. City of Lebanon, 98 Fed. 549.

[10] Crebs v. City of Lebanon, 98 Fed. 549.

[11] Baar v. Kirby, 118 Mich. 392; s. c. 76 N. W. 754.

legislative proceeding such as would have to be by ordinance.[12] But where a corporation only desires to do some ministerial act a resolution is sufficient.[13] An ordinance may, however, be in the form of a resolution, and if enacted with the formalities required by law in the case of an ordinance will generally be valid and binding.[14] In Louisiana it has been held that where there was a general power to make ordinances and by-laws and no form in which these should be enacted or passed was prescribed, an ordinance containing a prohibition and annexing a penalty was valid, notwithstanding it purported by its terms to be a resolution. In substance it was an ordinance and the form in which it was passed did not make it void.[15] But in Missouri it was decided that in the absence of an affirmative showing that a resolution is passed with the same formalities, and notified to the public in the same manner as an ordinance, an act which a municipal charter requires to be done by ordinance can not be done by resolution; nor can a general ordinance authorize it so to be done.[16]

§ 496. The same subject continued—Illustrations. — When the charter of the municipality expressly requires a certain act to be done by ordinance, it is safer to use the form of an ordinance rather than of a resolution.[17] To decide whether a resolution is sufficient for any certain purpose, it is necessary to consider the nature of the act sought to be authorized, the language of the general laws and of the charter relating to municipal ordinances, and the question whether the formalities required in case of ordinances have been followed in passing and publishing the ordinance. It has been held in Pennsylvania that a new street could be opened by resolution.[18] In New Jersey a resolution has been considered sufficient to bind the corporation for the purchase of fire-department apparatus;[19] and for the

[12] State v. Barnet, 46 N. J. L. 62.

[13] City of Quincy v. Chicago &c. R. Co., 92 Ill. 21. A resolution does not require the approval of the mayor: City of Burlington v. Dennison, 42 N. J. L. 165.

[14] Sower v. City of Philadelphia, 35 Pa. St. 231; San Francisco &c. Co. v. City of San Francisco, 6 Cal. 190; Drake v. Hudson River R. Co., 7 Barb. (N. Y.) 508; Town of Tipton v. Norman, 72 Mo. 380; Rumsly &c. Mfg. Co. v. Inhabitants &c., 21 Mo. App. 175.

[15] First Municipality v. Cutting, 4 La. An. 335.

[16] City of Cape Girardeau v. Fougeu, 30 Mo. App. 551.

[17] City of Central v. Sears, 2 Colo. 588; City of Delphi v. Evans, 36 Ind. 90; State v. Barnet, 46 N. J. L. 62; Cross v. Mayor &c., 18 N. J. Eq. 305; Mayor &c. v. Toney, 10 Lea (Tenn.) 643; City of Bryan v. Page, 51 Tex. 532.

[18] Sower v. City of Philadelphia, 35 Pa. St. 231.

[19] Green v. City of Cape May, 41 N. J. L. 45.

construction of a sewer;[20] and for the acceptance of a dedication.[21] In Iowa the amount of a license previously authorized to be imposed has been allowed to be imposed by resolution.[22] In Indiana a resolution was sufficient to authorize street improvements.[23] Resolutions have been held sufficient by the courts of Illinois to direct municipal agents to make specified contracts and also to appoint municipal agents.[24] A resolution confirming certain acts of the city of San Francisco was held sufficient.[25] On the other hand in New Jersey an ordinance has been held essential for the following purposes; namely: for grading a street;[26] for altering the width of a street sidewalk;[26a] and for appointing a commissioner to assess damages.[27] In Colorado the courts have held that an ordinance was necessary in fixing the compensation of city officers under the charter of the city.[28]

§ 497. **The province of ordinances.**—The by-laws of a municipal corporation are in the nature of local laws passed by the proper assembly or governing body of the corporation, and thus valid ordinances have the same effect within the corporate limits and with

[20] State v. Mayor &c., 27 N. J. L. 493.

[21] State v. City of Elizabeth, 37 N. J. L. 432.

[22] City of Burlington v. Putnam Ins. Co., 31 Iowa 102. Under an ordinance authorizing the city council to fix a license fee from time to time as it deems proper it may be fixed by resolution: Arkadelphia Lumber Co. v. Arkadelphia, 56 Ark. 370; s. c. 19 S. W. 1053.

[23] Board &c. v. Silvers, 22 Ind. 491; City of Indianapolis v. Imberry, 17 Ind. 175.

[24] City of Alton v. Mulledy, 21 Ill. 76; Egan v. City of Chicago, 5 Ill. App. 70.

[25] San Francisco &c. Co. v. City of San Francisco, 6 Cal. 190.

[26] State v. City of Bayonne, 35 N. J. L. 335. The general practice is that the grade of a street must be fixed by ordinance: Chicago &c. R. Co. v. City of Chicago, 174 Ill. 439; s. c. 51 N. E. 596; City of Bloomington v. Pollock, 141 Ill. 346; s. c. 31 N. E. 146; Washington Ice Co. v. City of Chicago, 147 Ill. 327; s. c. 35 N. E. 378; Chicago &c. R. Co. v. City of Chicago, 172 Ill. 66; s. c. 49 N. E. 1006; State v. City of Bayonne, 35 N. J. L. 335; Nazworthy v. City of Sullivan, 55 Ill. App. 48. A resolution is a much less formal act than an ordinance: State v. Lambertville, 45 N. J. L. 282; Kepner v. Commonwealth, 40 Pa. St. 124.

[26a] Cross v. Mayor &c., 18 N. J. Eq. 305.

[27] State v. Town of Bergen, 33 N. J. L. 39. Leasing of real estate must be by ordinance and not resolution: State v. Inhabitants &c., 58 N. J. L. 506; s. c. 33 Atl. 852. And so consent to lay tracks in streets must be by ordinance: West Jersey Tract. Co. v. Shivers, 58 N. J. L. 124; s. c. 33 Atl. 55. A mere resolution is not sufficient in Kansas: Edminson v. City of Abilene, 7 Kan. App. 305; s. c. 54 Pac. 568.

[28] City of Central v. Sears, 2 Colo. 588. See also, Walker v. City of Evansville, 33 Ind. 393.

respect to persons upon whom they lawfully operate that an act of the legislature has upon the people at large.[29] A municipal ordinance is a "local law prescribing a general and permanent rule."[30] As the state has all power necessary for the protection of the property, health and comfort of the public, it can delegate its power in this respect to local municipalities in such manner as may be deemed desirable and the state may resume it when deemed expedient. Therefore, legislation in respect to matters affecting only certain localities and not affecting the people at large in any considerable degree will be committed to a local municipal government.[31] A municipality may under the authority of its charter, or of the general law, or under its implied right to pass by-laws, establish all suitable ordinances for administering the government of the city, for the preservation of the health of the inhabitants and the convenient transaction of business within its limits, and for the performance of the general duties required by law of municipal corporations.[32] The particular instances in which public corporations have seen fit to exercise this power are, of course, innumerable. Many examples will be found under the subsequent discussion of the validity of ordinances.[33]

§ 498. Power to make ordinances.—It is clearly established that only the legislature of a state is empowered to make laws; yet this proposition must be taken with the qualification that the legislature

[29] Village of St. Johnsbury v. Thompson, 59 Vt. 300, 305; s. c. 9 Atl. 571; Des Moines Gas Co. v. City of Des Moines, 44 Iowa 505, 508; Bearden v. City of Madison, 73 Ga. 184; City of St. Louis v. Boffinger, 19 Mo. 13; State v. Tryon, 39 Conn. 183; Starr v. City of Burlington, 45 Iowa 87; Jones v. Firemen's &c. Ins. Co., 2 Daly (N. Y.) 307; McDermott v. Board &c., 5 Abb. Pr. (N. Y.) 422; Heland v. City of Lowell, 3 Allen (Mass.) 407. In England a by-law lawfully passed has been held to have the same effects within its limits as an act of parliament: Hopkins v. Mayor &c., 4 M. & W. 621, 640; Pittsburgh &c. R. Co. v. Bennett, 9 Ind. App. 92; s. c. 35 N. E. 1033.

[30] Citizens' Gas & M. Co. v. Town of Elwood, 114 Ind. 332; s. c. 16 N. E. 624.

[31] Harmon v. City of Chicago, 110 Ill. 400, 408. In this case it was held to come within the province of a by-law to declare dense smoke from any locomotive or boat to be a nuisance, and to prescribe a penalty therefor. This ordinance was held also not to impose such regulation on commerce as to interfere with the constitutional prerogative of congress to regulate commerce.

[32] State v. Merrill, 37 Maine 329. A city government has the right under the usual grant of power to regulate the use and enjoyment of private property in the city so as to prevent its proving pernicious to the citizens generally, and may, when the use to which the owner devotes his property becomes a nuisance, compel him to cease so to use it and punish him for refusal to obey: Louisville &c. R. Co. v. City of Louisville, 8 Bush (Ky.) 415.

[33] See also, the chapter on The Police Power, post, vol. 2.

is empowered to delegate to municipal corporations the power to make by-laws and ordinances regulating such subjects as fall within the proper province of an ordinance. That such power can be lawfully delegated is undoubted.[34] The power of the corporation to pass by-laws is in many English cases said to be derived from custom—ancient and long-continued usage ripening into a prescriptive right on the part of the municipal corporation.[35] But no such ground can be urged in this country, where the power to pass by-laws and ordinances proceeds entirely from legislation of comparatively recent dates.[36] Consequently there is in our courts no occasion to inquire into these customs, their validity and mode of proof.[37]

§ 499. **The same subject continued.**—This power of the legislature to delegate limited powers of local legislation to municipal corporations is not, however, so extended as to permit the delegation of any power of general state legislation.[38] "The power of municipal corporations to make by-laws," says Judge Cooley, "is limited in various ways: 1. It is controlled by the constitution of the United States and of the state. The restrictions imposed by those instruments which directly limit the legislative power of the state rest equally upon all the instruments of government created by the state. If a state can not pass an ex post facto law, or law impairing the obligation of contracts, neither can any agency do so which acts under

[34] Hill v. Commissioners &c., 22 Ga. 203; Perdue v. Ellis, 18 Ga. 586; Markle v. Town Council &c., 14 Ohio 586; Metcalf v. City of St. Louis, 11 Mo. 102; Ex parte Wall, 48 Cal. 279; Fell v. State, 42 Md. 71.

[35] Commonwealth v. Stodder, 2 Cush. (Mass.) 562, 568. For English cases bearing on these customs the reader is referred to Chamberlain of London's Case, 5 Coke 63; Day v. Savage, Hob. 212; Davenant v. Hurdis, Moor. 576; Lord Crumwell's Case (Taverner's Case), Dyer 322; Franklin v. Cromwell, Dal. 95; Earl of Excester v. Smith, 2 Keb. 367; s. c. sub nom. Earl of Exeter v. Smith, Cart. 177; Lambert v. Thornton, 1 Ld. Raym. 91; Scarling v. Criett, Moo. 75; Bricklayers v. Plasterers, Palm. 396. There were ancient assemblies in Cornwall, termed "stannary convocations," or "parliaments," which claimed to make statutes or laws for the rule and government of the miners in that district. "Some of their rules or ordinances were simply declarations of the customs prevailing in the district, but others contained regulations as to the modes of working, and as to the conduct of the persons engaged therein. They appear to have depended for validity upon the ancient customs of the country." See Rogers v. Brunton, 10 Q. B. 26; Harris v. Wakeman, Say. 254.

[36] Commonwealth v. Stodder, 2 Cush. (Mass.) 562, 575; Barling v. West, 29 Wis. 307; Taylor v. City of Pine Bluff, 34 Ark. 603; Napman v. People, 19 Mich. 352.

[37] Commonwealth v. Stodder, 2 Cush. (Mass.) 562, 568.

[38] State v. Hayes, 61 N. H. 264, 314.

the state with delegated authority. By-laws, therefore, which in their operation would be ex post facto or violate contracts, are not within the power of municipal corporations; and whatever the people by the state constitution have prohibited the state government from doing, it can not do indirectly through the local governments. 2. Municipal by-laws must also be in harmony with the general laws of the state and with the provisions of the municipal charter. Whenever they come in conflict with either, the by-law must give way."[39] There is, however, no constitutional objection to state legislation authorizing a city council to empower a particular board of officers who have charge of the whole or a portion of the affairs of a certain department to make reasonable police rules and regulations.[40] In such case, however, the department regulations are ministerial and

[39] Cooley Const. Lim. 238, 239; citing under the first limitation, Stuyvesant v. Mayor &c., 7 Cow. (N. Y.) 588; Brooklyn &c. R. Co. v. Brooklyn &c. R. Co., 32 Barb. (N. Y.) 358; Illinois Conf. Female College v. Cooper, 25 Ill. 133; Davenport &c. Co. v. City of Davenport, 13 Iowa 229; Western Saving Society v. City of Philadelphia, 31 Pa. St. 175; Haywood v. Mayor &c., 12 Ga. 404; People v. Chicago &c. R. Co., 118 Ill. 113; s. c. 7 N. E. 116; Kansas City v. Corrigan, 86 Mo. 67. And citing under the second limitation, Wood v. City of Brooklyn, 14 Barb. (N. Y.) 425; Mayor &c. v. Nichols, 4 Hill (N. Y.) 209; Town of Petersburg v. Metzker, 21 Ill. 205; Southport v. Ogden, 23 Conn. 128; Andrews v. Union &c. Ins. Co., 37 Maine 256; City of Canton v. Nist, 9 Ohio St. 439; Carr v. City of St. Louis, 9 Mo. 191; Commonwealth v. Erie &c. R. Co., 27 Pa. St. 339; City of Burlington v. Kellar, 18 Iowa 59; Conwell v. O'Brien, 11 Ind. 419; March v. Commonwealth, 12 B. Mon. (Ky.) 25; Baldwin v. Green, 10 Mo. 410; Cowen v. Village of West Troy, 43 Barb. (N. Y.) 48; State v. Georgia Medical Society, 38 Ga. 608; Pesterfield v. Vickers, 3 Coldw. (Tenn.) 205; Weith v. City of Wilmington, 68 N. C. 24. See also, on this subject, Burgess &c. v. Citizens' Pass. R. Co., 148 Pa. St. 87; s. c. 23 Atl. 1062; "Power of Municipal Corporations to Make By-laws," 15 Sol. J. & Rep. 209 and 230; "Municipal Ordinances," by Irving Browne, 27 Alb. L. J. 284. An ordinance which is invalid for want of power of the corporation to enact it is legalized by a statute which expressly recognizes it as valid: State v. Starkey, 49 Minn. 503; s. c. 52 N. W. 24; Lennon v. Mayor &c., 55 N. Y. 361; City of Logansport v. Crockett, 64 Ind. 319; Truchelut v. City Council, 1 N. & McC. (S. C.) 227; State v. Town of Union, 33 N. J. L. 350; Town of Bergen v. State, 32 N. J. L. 490; State v. Mayor &c., 34 N. J. L. 236. Cf. State v. Inhabitants &c., 38 N. J. L. 95.

[40] Commonwealth v. Plaisted, 148 Mass. 375; s. c. 19 N. E. 224; citing City of Brooklyn v. Breslin, 57 N. Y. 591; Birdsall v. Clark, 73 N. Y. 73; State v. Mayor &c., 34 N. J. L. 163; City of Taunton v. Taylor, 116 Mass. 254; Sawyer v. State Board &c., 125 Mass. 182; Commonwealth v. Young, 135 Mass. 526; and recognizing as sound but not antagonistic to the foregoing, Day v. Green, 4 Cush. (Mass.) 433; City of Lowell v. Simpson, 10 Allen (Mass.) 88; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72.

not legislative. An ordinance may derive its validity from several different grants of power contained in the charter.[41] And where the statute authorizes the licensing of various kinds of business an exercise of that power may be in relation to one kind of business only. The exercise of the power may be assumed from time to time as occasion may require.[42]

§ 500. **By whom the power is to be exercised.**—The ordinances which the municipality is thus empowered to make must be adopted by the proper body and in the manner prescribed by law. The legislative assembly of the corporation is usually a select or representative body elected by the qualified voters of the corporation. This representative body is the agent of the corporation and its authorized acts are the acts of the corporation. Its members are not the municipal corporation or a corporation of any kind.[43] In many New England towns the legislative body is not representative, but is composed of all the citizens of the town, who meet in person and administer the public affairs of the town.[44] As the power of a public corporation to pass ordinances emanates only from the legislature, this power must be exercised strictly within the limits prescribed by the general and special legislation on the subject.[45]

§ 501. **Validity generally.**—In regard to the general validity of ordinances it may be stated that there arises a presumption in reference to their validity unless their repugnance to the charter clearly appears.[46] So where an ordinance is passed granting the use

[41] Gundling v. City of Chicago, 176 Ill. 340; s. c. 52 N. E. 44; Kinsley v. City of Chicago, 124 Ill. 359; s. c. 16 N. E. 260.

[42] Kolb v. Mayor &c., 64 N. J. L. 163; s. c. 44 Atl. 873.

[43] Dillon Munic. Corp. 270, and cases cited.

[44] For the Massachusetts statutes relating to these towns see Gen. St. 1860, ch. 18 and ch. 19. For an elaborate discussion of the distinctions between towns and cities see the learned opinion of Gray, C. J., in Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332. This form of government affords an example of the pure democracy which the increase of population and the consolidation of nations has made impracticable in modern times. It is identical in principle with the system of government of Athens, where all the free men met in the 'Αγορά; of the Teutonic hamlet, where all freemen voted in the folkmote; and of many medieval cities, in which every burgher voted directly in public meeting on all questions of public welfare. The democracy of the New England form of government is, however, far purer than those mentioned; for every adult votes, while in the other instances there was always a large slave population which had no voice in the meeting.

[45] Horr & Bemis Munic. Police Ord., in loco.

[46] Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939.

of streets for electric lighting, but it is not disclosed whether it is for public or private purposes, it will be presumed that it is for public purposes, and thus render valid the ordinance.[47] And the onus is upon the one who asserts the invalidity to show wherein the ordinance is invalid.[48] An ordinance may, under some circumstances, be given the same force and effect as a statute. Thus where a statute provides that a city may by ordinance fix the time and manner of holding an election, such ordinance has the same power and effect, and is to be construed as part of the statute itself.[49] Where the formalities in regard to the passage of an ordinance are not mandatory, but simply directory, their omission will not invalidate the ordinance. Thus it is not necessary to the validity of an ordinance that the minutes shall show notice required by charter.[50] Nor is an ordinance rendered invalid by the failure of the clerk to certify when it was presented to and returned by the mayor.[51] Nor by a provision that it shall go into effect earlier than the statute provides.[52] Thus when the statute provides that an ordinance shall not be in force until ten days after its publication and the ordinance provides that it shall take effect on its passage, the statute prevails.[53]

§ 502. **Validity in respect of form—(a) Meeting of council.**—The ordinance must be passed at a legally convened meeting of the legislative body. The subject of corporate meetings is more fully discussed elsewhere,[54] but a few illustrations bearing on the validity of ordinances may be given. The provisions respecting New England town meetings are peculiar and must be especially studied.[55] The councils of ordinary cities and towns are, as has been stated, representative bodies, elected by the qualified voters of the corporation, and consisting of a number of members fixed by law. It is the legislative agent of the corporation, and through it only can the corporation take legislative action and be bound. The legislative and corporate powers of a municipality whose exercise is by the charter or constituent acts committed to the council or governing body can be exercised only at a corporate meeting duly held, and the corporate

[47] Levis v. City of Newton, 75 Fed. 884.

[48] Wood v. City of Seattle, 23 Wash. 1; s. c. 62 Pac. 135.

[49] City of San Luis Obispo v. Fitzgerald, 126 Cal. 279; s. c. 58 Pac. 699.

[50] Barr v. Mayor &c., 58 N. J. L. 255; s. c. 33 Atl. 477.

[51] Boehme v. City of Monroe, 106 Mich. 401; s. c. 64 N. W. 204.

[52] Anderson v. City Council &c., 58 N. J. L. 515; s. c. 33 Atl. 846.

[53] Illinois &c. R. Co. v. People, 161 Ill. 244; s. c. 43 N. E. 1107.

[54] See the chapter on Public Boards, ante.

[55] See the chapter on Meetings and Elections, ante.

will must be ascertained by vote and embodied in a definite form.[56] The meetings of such legislative municipal assemblies are either (1) stated or regular meetings or (2) special meetings.[57] The charter or some ordinance generally fixes the time for holding regular or stated meetings, and the members are thus charged with notice; and no further or special notice is necessary unless specially required by law. But notice of a special meeting must, unless express provision to the contrary is made by law, be given to each member entitled to be present.[58] There are frequently provisions in charters or in ordinances relating to the calling of meetings of councils to the effect that upon assembly the mayor or other presiding officer shall specially state to them when assembled the objects for which they have been convened, and that their action shall be confined to such object. So under a charter containing such provisions it has been decided that statements in the opening message that the mayor would propose other legislation, and subsequent messages proposing other legislation not specifically alluded to in the first message, would not authorize legislation on such subjects;[59] and that the mayor could not enlarge the scope of legislation by stating in his message calling such session that "he was not averse to submitting any measure" during the session, if deemed of public interest, and that an ordinance passed at the submission of the mayor during the session was void.[60] The charter of Kansas City provides that, "whenever a special session of the common council shall have been called by the mayor, he shall state to them, when assembled, the cause for which they have been convened, and their action shall be confined to such cause or causes." It was held that the common council had power, at a special session called for the purpose of acting upon a special ordinance to pave a street, to enact another ordinance for paving the same street, their action not being limited to the ordinance mentioned in the mayor's message, but extending over the subject-matter of the ordinance.[61]

§ 503. (b) The same subject continued.—The ordinance must be passed by a council which has the legal authority and right to pass

[56] Central Bridge Co. v. City of Lowell, 15 Gray (Mass.) 106, 116.

[57] See also, the chapter on Public Boards, ante.

[58] See chapter on Public Boards, ante. The provision of a city charter declaring that the mayor may call special meetings of the council "by causing notice to be left at the usual residence of each member" of the council does not prevent personal notice: Russell v. Wellington, 157 Mass. 100; s. c. 31 N. E. 630.

[59] City of St. Louis v. Withaus, 16 Mo. App. 247.

[60] City of St. Louis v. Withaus, 16 Mo. App. 247.

[61] Smith v. Tobener, 32 Mo. App. 601.

such a by-law. Thus an ordinance passed at a meeting of a county board of supervisors, held pursuant to an act of the legislature which had been previously repealed, is void.[62] The meeting of the council at which the ordinance is passed must be held at the time prescribed by law. Consequently under charter of the city of Rochester in New York, which provided that at the next meeting of the council after a disapproval by the mayor, it should proceed to reconsider the resolution disapproved, and, if it should be passed by two-thirds of all the members, it should have full force and effect notwithstanding the disapproval, the courts decided that the council must consider the resolution at the next meeting after the disapproval comes in, and could not postpone it until a subsequent meeting.[63] The formal regularity of the meeting will be generally presumed; as where in Nebraska, on certificate of the conviction of a person for the sale of liquor on Sunday, a resolution revoking his license directed the marshal to notify the licensee of such revocation "by the mayor and council," it was decided it need not otherwise appear that the mayor was present, and that it would not be presumed that he was not, as under the Nebraska statute[64] it is his official duty to preside at all meetings of the council.[65] The provisions relating to New England town meetings are peculiar. Thus it has been held in New Hampshire that defendants in certain suits were not disqualified by interest from voting in a town meeting called to take action on such suits.[66] And it was held that a vote at a meeting of citizens, called under the New Hampshire statute[67] authorizing the mayor and aldermen to call a meeting on the written request of one hundred legal voters, was merely advisory and did not control the action of the city council.[68]

§ **504.** (c) **Quorum and votes.**—Unless there be some special provision by charter or law to the contrary, the common-law rule as to quorums and majorities of bodies of definite number obtains with reference to city councils. That is to say, a majority of the whole number must be present to constitute a legal quorum; and a majority of that quorum is necessary to do any valid act.[69] So where a city

[62] County of San Luis Obispo v. Hendricks, 71 Cal. 242; s. c. 11 Pac. 682.

[63] Peck v. City of Rochester, 3 N. Y. S. 872; s. c. 18 N. Y. St. 244.

[64] Comp. St. Neb., ch. 13, § 20.

[65] Martin v. State, 23 Neb. 371; s. c. 36 N. W. 554, Maxwell, J., dissenting.

[66] Dorchester v. Youngman, 60 N. H. 385.

[67] N. H. Gen. Laws, ch. 46, § 18.

[68] Kelley v. Kennard, 60 N. H. 1.

[69] Regents &c. v. Williams, 9 Gill & J. (Md.) 365; In re Willcocks, 7 Cow. (N. Y.) 402; Buell v. Buckingham, 16 Iowa 284; Barnert v. Mayor &c., 48 N. J. L. 395; s. c. 6 Atl. 15. See also, the chapter on Public Boards, ante.

charter does not prescribe the number of votes necessary to an election of a presiding officer by the council, the votes of a majority of a quorum elect.[70] If the charter or statute contains no provision making a less or greater number than a majority of the members a quorum, then the council has no power to declare by ordinance that a number less or greater than the majority shall constitute a quorum. The common-law rule must hold unless superseded by the express provision of a statute or the charter.[71] If more than a quorum be present, and a majority of the quorum vote in favor of a given measure, but not a majority of those present, some members refraining from voting at all, the preponderance of authority seems to be that such vote is sufficient, although there are decisions to the contrary. So in Indiana it has been held that a resolution may be legally adopted by the vote of three of the six members of a city council, where the other three are present but refuse to vote, as the vote of the majority of the quorum present is effective.[72] In that case it is said: "If there is a sufficient quorum present, a majority of those voting is sufficient."[73]

[70] State v. Farr, 47 N. J. L. 208.

[71] Heiskell v. Mayor &c., 65 Md. 125. In this case the council declared two-thirds of the members elected to be necessary for a quorum, although there was no provision of statute or charter on the subject. It was decided that the ordinance was void on the ground stated. See also, Blackett v. Blizzard, 9 B. & C. 851; Barnert v. Mayor &c., 48 N. J. L. 395; s. c. 6 Atl. 15.

[72] Rushville Gas Co. v. City of Rushville, 121 Ind. 206; s. c. 23 N. E. 72; 16 Am. St. 388; 6 L. R. A. 315. See §§ 157, 288, 289, ante.

[73] Willcock remarks to the same effect:—"After an election has been properly proposed, whoever has a majority of those who vote, the assembly being sufficient, is elected, although a majority of the entire assembly altogether abstain from voting, because their presence suffices to constitute the elective body, and if they neglect to vote it is their own fault, and shall not invalidate the act of the others, but be construed as an assent to the determination of the majority of those who do vote:" Willcock Munic. Corp., part 1, § 546. "Those who were present, and who help to make up the quorum, are expected to vote on every question, and their presence alone is enough to make the vote decisive and binding, whether they actually vote or not. The objects of legislation can not be defeated by the refusal of any one to vote when present. If eighteen are present and nine vote, all in the affirmative, the measure is carried, the refusal of the other nine to vote being construed as a vote in the affirmative so far as any construction is necessary:" Horr & Bemis Munic. Police Ord., § 43. See also, State v. Green, 37 Ohio St. 227; Launtz v. People, 113 Ill. 137; Cass Co. v. Johnston, 95 U. S. 360; St. Joseph Tp. v. Rogers, 16 Wall. 644; State v. Remick, 37 Mo. 270; Everett v. Smith, 22 Minn. 53; Oldknow v. Wainwright, 2 Burr. 1017; King v. Bellringer, 4 T. R. 810; Inhabitants &c. v. Stearns, 21 Pick. (Mass.) 148.

§ 505. (d) The same subject continued.—In a Tennessee case, however, the contrary doctrine was sustained.[74] In that case the aldermen of the city of Knoxville, nine in number, and the mayor, constituted a board, the majority of which had the power to elect a certain city official. The mayor had no vote except in case of a tie vote among the aldermen, in which case his vote was final. Eight aldermen were present—a quorum under the statute—of whom four voted for one Lawrence, three for another candidate, and one cast a blank ballot. The mayor declared Lawrence elected. The court reversed this decision, distinguishing between elections by an indefinite and a definite body of voters, and holding that in the latter case the validity of the act depends upon the concurrent votes of a majority of those present. In the opinion delivered it was said: "It appears * * * that the rule is settled that a majority of a definite body present and acting must vote for a candidate in order to elect him, and that it is not sufficient that he receive a plurality of votes cast, or a majority if blank ballots are excluded. His claim must not depend upon the negative character of the opposition, but upon the affirmative strength of his own vote; that it is not sufficient that a majority were not cast against him, to be elected. The majority must be cast for him." With reference to the blank vote cast, and the contention that it should not count at all, and that therefore only seven ballots were cast, and a majority, four, elected Lawrence, the court said: "It is true that the blank vote can not be, in the technical sense, a ballot, but it is nevertheless an act of negation,—affirmative in showing that another voter acted, negative in determining the majority. It was one of eight attempted to be cast with the purpose of not supporting complainant, and is only to be counted in showing that he did not get a majority, just as would have resulted had it been an illegal vote, as being for two candidates or otherwise."[75] Where

[74] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 17 Am. St. 870; 6 L. R. A. 308.

[75] Lawrence v. Ingersoll, 88 Tenn. 52; s. c. 12 S. W. 422; 17 Am. St. 870; 6 L. R. A. 308. From this view of the case, however, the chief justice dissented, following the rule as stated in the preceding section, and citing Rushville Gas Co. v. City of Rushville, 121 Ind. 206; s. c. 23 N. E. 72. To this same effect is the language used in 6 Am. & Eng. Encyc. of Law 331:—"The only way to defeat the election of a candidate at an election where the number of electors is indefinite, or where the law does not require a majority of all the members of a body having a definite number, as opposed to a majority of those voting, is by voting for another candidate; and the fact that a majority enters a protest against the minority candidate, voted for at a regularly called election, will not defeat the election if no other candidate is voted for;" citing Hendrickson v. Decow, 1 Saxt. 577. See also, §§ 156, 157, ante.

the law expressly requires a certain proportion of votes in order to pass a measure, it can not be reconsidered by a less proportion.[76] There are very frequently special provisions in the charter or in the statutes prescribing a certain proportion of votes in order to pass any measure. These requirements must be strictly observed. So, where the charter of Hoboken provided that if, after the veto of an ordinance by the mayor, two-thirds of the members of the common council elected should pass the same, it should take effect as a law, and under the charter eight members were elected, one of whom died, it was held that it required the votes of six members to pass an ordinance over the mayor's veto.[77] Under the Kansas statute giving a casting vote to the mayor when the council is equally divided, and elsewhere saying that he shall appoint by and with the assent of the council, on the question of the confirmation of an appointment he has the casting vote.[78] And under the Nebraska statutes[79] applying to cities of the second class, of less than five thousand population, and providing that "to pass or adopt any by-law, ordinance, or resolution or order to contract, a concurrence of the majority of the whole number of members elected to the council or trustees shall be required;" and providing that the mayor shall preside at all council meetings and have a casting vote when the council is equally divided, and none other,—an ordinance to redistrict the city, voted for by two members of a council of four and by the mayor, is void.[80] The Florida municipal charter act provides that a majority of the members of the council shall be required to form a quorum for the transaction of business. A rule of proceeding adopted by a council prescribed that a proposed ordinance might be passed on its first reading by a majority vote of the members present, and then placed on a second reading by a like vote, and if passed on its second reading might then be read as passed as a whole on such second reading, but no ordinance should be put on its third reading at the same meeting at which it was read the first time except by "unanimous consent of the council." It was decided that the phrase quoted means all the members who may be present at the time the action as to putting the ordinance on its third reading

[76] A resolution of a village council, to adopt which the charter requires a two-thirds vote, can not be reconsidered by a majority less than two-thirds: Whitney v. Common Council &c., 69 Mich. 189; s. c. 37 N. W. 184. See § 297 et seq. and § 377 et seq., ante.

[77] State v. Mayor &c., 52 N. J. L. 88; s. c. 18 Atl. 685.

[78] Carroll v. Wall, 35 Kan. 36; s. c. 10 Pac. 1.

[79] Comp. St. Neb. 1885, ch. 14, art. 1, § 76.

[80] State v. Gray, 23 Neb. 365; s. c. 36 N. W. 577.

is taken, whether a bare quorum or more. It does not require that every member of the council shall be present and consent.[81]

§ **506.** (e) **Mode of enactment.**—The mode of enacting the ordinance is generally prescribed in the charter or an ordinance, and their requirements should be strictly complied with. So where the charter prescribes that no by-law shall be passed unless introduced at a previous meeting, the provision has been held to be mandatory, and a by-law passed in violation thereof to be void.[82] Where, however, a city charter requires a resolution to lie over "at least four weeks after its introduction," a resolution introduced on Monday night may be acted on on the fourth Monday thereafter.[83] The rules relating to the passage of by-laws must be construed with reference to the other provisions on the subject. Thus where a clause in the charter of the city of Minneapolis provided that no ordinance should be passed at the same session at which it was introduced except by the unanimous consent of all the members of the council present, it was decided that this provision did not require a unanimous vote upon the final passage of the ordinance, but only unanimous consent that it be put to a vote for its passage, since the same section further provided that all ordinances should be passed by an affirmative vote of a majority of all the members, etc.[84] The charter frequently prescribes that the ayes and noes shall be called and published whenever the council votes on an improvement requiring a tax, or on some similar subject. Such a provision has been held in New York to be merely directory.[85] And

[81] Atkins v. Phillips, 26 Fla. 281; s. c. 8 So. 429.

[82] State v. Town of Bergen, 33 N. J. L. 39, in which case an ordinance for opening a street was introduced at one meeting, and at the next meeting the name of one of the commissioners was changed and the ordinance was passed. The court held that the ordinance was void, as the name of the commissioner who was substituted should have been laid over to a subsequent meeting.

[83] Wright v. Forrestal, 65 Wis. 341; s. c. 27 N. W. 52. Where a charter provides that at least two weeks shall elapse between the passage of an ordinance from one branch of the council to another, from April 5 to April 19 will be sufficient: Gleason v. Barnett, 20 Ky. L. 1865; s. c. 49 S. W. 1060.

[84] State v. Priester, 43 Minn. 373; s. c. 45 N. W. 712.

[85] Striker v. Kelly, 7 Hill (N. Y.) 9, 24, 29. It is to be noted that in this case Mr. Justice Bronson dissented, and the case was subsequently reversed on other grounds in 2 Denio (N. Y.) 323. Mr. Justice Bronson's argument against the decision of the other judges is as follows:—"It is well known that men acting in a body, especially when under the cover of corporate privileges, will often do what no one of them would be willing to do if acting alone and upon his individual responsibility. And they will sometimes say aye, or permit a matter to

so although the code of Iowa requires the yeas and nays to be taken and recorded on the passage of an ordinance, it has been considered immaterial that the nays do not appear to have been called where only five members of a council composed of eight were shown by the record to have been present, all of whom voted in the affirmative.[86] In Wisconsin it has been held that this requirement has no application to motions to adjourn.[87] But in many states the provision has been held mandatory, and ordinances passed without due observance of the requirement are considered void.[88] When such a provision is considered mandatory the proceeding must be entered on the jour-

pass sub silentio, when they would not venture to record their names in favor of the measure. To guard against such evils and protect the citizens against the imposition of unnecessary burdens, it was provided that the ayes and noes should be called and published whenever a vote of the common council should be taken on any proposed improvement involving a tax or assessment upon the citizens. The language is imperative—the ayes and noes shall be called when the particular mode in which the corporation is to act is specially declared by its charter. I think it can only act in the prescribed forms. The contrary doctrine wants the sanction of legal authority, and is fraught with the most dangerous consequences. It would place corporations above the laws, and there is reason to fear that they would soon become an intolerable nuisance." See also, Elmendorf v. Mayor &c., 25 Wend. (N. Y.) 693; In re Mount Morris Square, 2 Hill (N. Y.) 14; City of St. Louis v. Foster, 52 Mo. 513; City of Indianola v. Jones, 29 Iowa 282; § 305, ante.

[86] Town of Bayard v. Baker, 76 Iowa 220; s. c. 40 N. W. 818. Where the charter says the yeas and nays on the passage of all ordinances shall be entered in the journal the provision is directory: Village of Belknap v. Miller, 52 Ill. App. 617; Barr v. Village of Auburn, 89 Ill. 362. Where the statute requires ordinances to be submitted in writing at a regular meeting, and to be enacted at a subsequent meeting, a substantial alteration of the ordinance at the time of its passage renders it invalid: Simmerman v. Borough of Wildwood, 60 N. J. L. 367; s. c. 40 Atl. 1132. There is no presumption as to the regularity of the passage of an ordinance: City of Altoona v. Bowman, 171 Pa. St. 307; s. c. 33 Atl. 187. In pleading an ordinance it need not set forth all the formalities in reference to the passage: Board &c. v. Henzler (N. J.), 41 Atl. 228. See also, Becker v. City of Washington, 94 Mo. 375; s. c. 7 S. W. 291; Town of Flora v. Lee, 5 Ill. App. 629.

[87] City of Green Bay v. Brauns, 50 Wis. 204; s. c. 6 N. W. 503.

[88] Cutler v. Town of Russellville, 40 Ark. 105; Steckert v. City of East Saginaw, 22 Mich. 104; City of Delphi v. Evans, 36 Ind. 90; s. c. 10 Am. R. 12; City of Logansport v. Crockett, 64 Ind. 319; Swindell v. State, 143 Ind. 153; s. c. 42 N. E. 528; 35 L. R. A. 50; Tracy v. People, 6 Colo. 151; Rich v. City of Chicago, 59 Ill. 286. A statute requiring a resolution to be read on three separate days is mandatory, and unless so done, proceedings thereunder are void: Thatcher v. City of Toledo, 19 Ohio C. C. 311. A violation of parliamentary rules in the passage of an ordinance does not render it void: Hutcheson v. Storrie (Tex. Civ. App.), 48 S. W. 785.

nal or other record of the meeting, and the regularity of the vote can be evidenced from no other source.[89]

§ 507. (f) **The same subject continued.**—These rules can generally be suspended by a unanimous vote of the council or by a vote of a large proportion of that body. By such suspension the usual formalities of enactments are dispensed with and the ordinance is passed more speedily than the ordinary procedure would allow. A statutory requirement that all ordinances of a permanent nature shall be fully and distinctly read on three different days unless three-fourths of the members elected dispense with the rule is mandatory; and where the rule was dispensed with as to several of such ordinances upon one and the same vote, which were thereupon passed by a single vote, it was held to be a violation of the provision, the latter being construed to require a separate suspension as to each ordinance.[90] Such suspension of the rules is sometimes presumed prima facie to be regular from the record showing that the rules were suspended without specifying the procedure of suspension. So when it was provided by the charter of a city that "no ordinance shall be passed until it shall have been read in such board [of aldermen] at two several meetings," etc., "unless this provision be suspended by a vote of all members," etc., and the record showed that certain ordinances were introduced "which were read and ordered to be read a second time," etc., "the second reading being dispensed with," etc., it was decided that the second reading was properly shown to be dispensed with, although it was not dispensed with at a subsequent meeting, and although the record of the subsequent meeting did not show that the second reading had been dispensed with.[91] Statutory provisions as to passage, where mere formalities, are construed as directory when the language of the provision permits.[92] Provision is often made that no ordinance

[89] Rich v. City of Chicago, 59 Ill. 286; Tracy v. People, 6 Colo. 151; In re Carlton Street, 16 Hun (N. Y.) 497. See § 305, ante.

[90] Campbell v. City of Cincinnati, 49 Ohio St. 463; s. c. 31 N. E. 606.

[91] Nevin v. Roach, 86 Ky. 492; s. c. 5 S. W. 546. And it is also held in Iowa that under a statute providing that an ordinance shall be read on three different days unless three-fourths of the council vote to "dispense" with the rules, an ordinance is valid if passed by a three-fourths vote on a motion to "suspend" the rules, there being no substantial difference in the terms: Town of Bayard v. Baker, 76 Iowa 220; s. c. 40 N. W. 818, construing code of Iowa, § 489.

[92] So where both houses adjourn on the day a bill is presented to the mayor, and the bill is signed by the mayor, and filed in the city register's office, it becomes a valid ordinance, though it is not returned to the house in which it originated, as required by art. 3, § 23, of the charter; as there is no provision in the charter which prescribes that no bill

shall be passed without a certain publication beforehand. This provision has been held in many cases to be mandatory, and an ordinance passed without such prescribed publication is void.[93] The formalities of the passage of an ordinance must be completed before the ordinance takes effect.[94] Where a city has recognized an ordinance, and treated it as adopted, it will be presumed to have been approved by the mayor.[95] The president of the council may approve an ordinance in the absence of the mayor.[96]

§ 508. **(g) The signing of the ordinance.**—The charter or statute frequently contains provisions that every ordinance must be signed by the mayor or other presiding officer. Whether in such a case the signature of the mayor is essential to the validity of the ordinance or not depends chiefly upon the language of the charter or act. If the charter or act makes the signature essential, the ordinance is void if unsigned; if on the other hand the charter does not make the signature of the presiding officer an essential condition precedent to the validity of the ordinance, the provision has frequently been regarded as directory. Thus an ordinance passed by the common council of the city of East Portland could not take effect until approved by the mayor, and all proceedings had under such ordinance before its approval were held to be nullities.[97] It has also been decided that under

shall become an ordinance which shall not be returned to the house in which it originated: Barber Asphalt Pav. Co. v. Hunt, 100 Mo. 22; s. c. 13 S. W. 98. And an ordinance of the city of St. Louis providing for street improvement is not invalid because the board of public improvements, after submitting it to the municipal assembly, by whom it was returned amended, adopted it as amended, and recommended its passage, instead of preparing a new ordinance: Bambrick v. Campbell, 37 Mo. App. 460.

[93] So when a statute prescribes that no assessment resolution shall be passed without previous publication for three days a resolution passed without such publication is void: Ex parte Smith, 52 N. Y. 526; In re Phillips, 60 N. Y. 16; State v. Mayor &c., 38 N. J. L. 110; State v. Smith, 22 Minn. 218.

[94] If any essential step in the execution of a new ordinance takes place before it becomes operative, no charge made in invitum against a property-owner by virtue of the proceeding thereunder acquires any validity: Keane v. Cushing, 15 Mo. App. 96.

[95] Santa Rosa City R. Co. v. Central St. R. Co. (Cal.), 38 Pac. 986.

[96] A statute requiring all resolutions, and other matters, to be furnished the mayor for consideration applies to acts which are legislative in character only: Erwin v. City of Jersey City, 60 N. J. L. 141; s. c. 37 Atl. 732. In Iowa a resolution of the city council of a city of first or second class must be signed by the mayor or passed over his veto: Heins v. Lincoln, 102 Iowa 69; s. c. 71 N. W. 189; Saleno v. City of Neosho, 127 Mo. 627; s. c. 30 S. W. 190.

[97] Ladd v. City of East Portland, 18 Or. 87; s. c. 22 Pac. 533. For another instance where the signature

far-reaching in their effects, so far as the well-being of the city is concerned, as are its legislative acts. As a general rule where the veto power is given to the mayor there is also provision made for overruling the veto by a vote of the council larger than the ordinary quorum, but usually fixed according to the total number of members. The veto should be in writing, addressed to the council, pointing out specifically wherein the act is objectionable, and suggesting such amendments as may seem suitable, in case the ordinance is not radically wrong.[104]

§ 511. (i) **Publication of the ordinance—When mandatory.**—An ordinance, being a law, must be published in some way in order to give notice to those affected thereby of its existence. It is generally required by law that the ordinance shall be published, and the statutory or charter regulations on this point should be closely followed in order to avoid any question as to the validity of the ordinance. When there was no requirement as to the publication of an ordinance of an Alabama town except a constitutional provision that no person should be punished but by virtue of a law established and promulgated prior to the offense and legally applied, a publication of seven days was held sufficient in the absence of proof of insufficiency of such publication. The court said: "The matter therefore is vested in the discretion of the municipal government but not an arbitrary discretion. A reasonable opportunity must be given to the public within the corporate limits to be informed as to the ordinances they are commanded to obey before they can be punished for their violation.[105] In general when the charter or general law requires publication, it must be made according to the requirement, else the ordinance will be void and no penalty can be enforced under it.[106] Thus under a pro-

[104] Where a charter requires every resolution to be signed, or returned with the mayor's objections, the mere writing of a letter suggesting amendments is not a compliance with the charter: Kittinger v. Buffalo Traction Co., 160 N. Y. 377; s. c. 54 N. E. 1081. The veto power is not confined alone to legislative acts: Gleason v. Peerless Mfg. Co., 37 N. Y. S. 267; s. c. 72 N. Y. St. 592. A resolution to expend money may be vetoed: People v. Common Council &c., 90 Hun (N. Y.) 488; s. c. 36 N. Y. S. 59. As to what will not amount to a veto by the mayor to an ordinance, see Oswald v. Gosnell, 21 Ky. L. 1660; s. c. 56 S. W. 165. After a veto, a resolution by the requisite number is sufficient, though in terms it does not express to be a "reconsideration" of the previous action: Oakley v. City of Atlantic City, 63 N. J. L. 127; s. c. 44 Atl. 651.

[105] Pitts v. District of Opelika, 79 Ala. 527.

[106] Meyer v. Fromm, 108 Ind. 208; s. c. 9 N. E. 84; City of Napa v. Easterby, 61 Cal. 509; Waln's Heirs v. City of Philadelphia, 99 Pa. St. 330; Higley v. Bunce, 10 Conn. 567; Barnett v. President &c., 28 Ill. 62;

vision in the general town-incorporation laws of Dakota which provided that "every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in said town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect," a by-law passed by the town trustees, but never published or posted, in a case where no emergency was alleged or shown, was considered to be of no force or effect, even as to such persons as had notice of its passage by the trustees.[107] An ordinance providing a penalty must be published in Nebraska.[108] A statute requiring an ordinance to be published a specified time, with notice of the time of its consideration, is mandatory.[109] Parol proof may be made where no proof is on file in the office of the proper custodian.[110]

§ 512. (j) **The same subject continued—When directory.**—But under a city charter providing that all ordinances passed by the city council, within thirty days after they became laws, should be published, but that the failure to publish should not render void or affect the validity of any such ordinance, unless delay might cause the ordinance to act retrospectively on the rights of individuals, it was held in Missouri that an ordinance went into effect from the date of passage and became a law without publication.[111] And it has been decided in Massachusetts that a requirement by ordinance that city ordinances shall be published two weeks successively in three daily newspapers published in the city was directory; that it contemplated publication after the enactment of the ordinance, and that compliance with it was not a condition precedent to the validity of the ordinance. The ordinance in question prohibited any one from delivering an address on the Boston common without permission of a committee of

Schwartz v. City of Oshkosh, 55 Wis. 490; s. c. 13 N. W. 450.

[107] O'Hara v. Town of Park River, 1 N. D. 279; s. c. 47 N. W. 380; National Bank &c. v. Town of Grenada, 44 Fed. 262. The mere fact that the city officials may have exceeded their authority in incurring a debt for publication does not invalidate the ordinance: Kimble v. City of Peoria, 140 Ill. 157; s. c. 29 N. E. 723.

[108] Union Pac. R. Co. v. Montgomery, 49 Neb. 429; s. c. 68 N. W. 619.

[109] Herman v. City of Oconto, 100 Wis. 391; s. c. 76 N. W. 364.

[110] Larkin v. Burlington &c. R. Co., 91 Iowa 654; s. c. 60 N. W. 195. What is a sufficient publication,—see De Loge v. New York &c. R. Co., 157 N. Y. 688; s. c. 51 N. E. 1090.

[111] Sweitzer v. Liberty, 82 Mo. 309. So also, under St. Mass. 1850, ch. 184, § 20, an ordinance of the city of Lynn need not be published, as a condition precedent to its validity. It takes effect upon its passage, if no time therein is limited or named: Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451.

the common council. The court, however, did not support their decision sustaining the validity of the ordinance on this ground alone, holding that the ordinance was a re-enactment or continuance of an older ordinance, and that in such cases publication was under the Massachusetts laws unnecessary.[112]

§ 513. (k) The same subject continued—Amendments and re-enactments.—In considering the question whether publication is requisite to the validity of an ordinance, the decision must generally be gathered from the language of the legislation relating to that subject.[113] As the object of publication is of course to give notice of the ordinance to those who must obey it, the importance of publication varies according to the nature of the ordinance. Thus, publication of a police ordinance restricting personal liberty should be strictly carried out, while an administrative ordinance, even though directed to be published, has been held valid in New Jersey before completion of the publication required by law.[114] In a recent Louisiana case it was decided that an ordinance ordering a vote of the taxpayers on the question of a special tax, though supplemented by an amendment after it was advertised, would not be vitiated thereby, provided the amendment did not materially affect its essential parts.[115] Where an ordi-

[112] Commonwealth v. Davis, 140 Mass. 485, 487; s. c. 4 N. E. 577.

[113] So where § 25 of the Colorado act concerning towns and cities provides that "all by-laws of a general or permanent nature, and those imposing any fine, penalty or forfeiture, shall be published; . . . and it shall be deemed a sufficient defense to any suit or prosecution for such fine, penalty or forfeiture to show that no such publication was made," and enacts that "such by-laws and ordinances shall not take effect and be in force until the expiration of five days after they have been published," it was decided that the last provision applied as well to by-laws and ordinances "of a general or permanent nature" as to those imposing a fine, etc.: National Bank &c. v. Town of Grenada, 44 Fed. 262, 266. And it was further stated by Philips, J., quoting from the opinion in Clark v. City of Janesville, 10 Wis. 135, that "the object of such provision for publication was the protection of the people by preventing their rights and interests from being affected by laws which they have no means of knowing."

[114] Stuhr v. Mayor &c., 47 N. J. L. 147. In this case the city charter forbade any change in the salaries of municipal officers during their terms of office; and also required all ordinances to be published twenty days before taking effect. An ordinance was passed changing the salary of one of the officers. After its enactment but before the expiration of the twenty days of publication a new incumbent was elected. It was held that he was entitled to the increased salary provided by the ordinance, and that within the intent of the charter the ordinance took effect as soon as passed. This construction would not perhaps be given in the case of a police ordinance restricting personal rights.

[115] MacKenzie v. Wooley, 39 La. An.

nance is a mere re-enactment or combination of an older ordinance it is not necessary, unless expressly required by law, that it should be republished.[116]

§ 514. (1) **Manner of publication.**—In considering the mode of publication requisite in any particular case, reference must be made to the general principles governing the interpretation of statutes, since the manner of publication is almost always regulated by legislation. When alternative modes of publication are contemplated by the statute, and it is expressly provided that election between these modes must be made by the corporation, an ordinance published by order of the town clerk without election by the council as to the mode of publication is void.[117] But when the law did not expressly enjoin upon the council the duty of designating the newspaper but was silent upon that point, it was concluded in New York that the clerk might properly designate the newspaper.[118] In California the charter of a city required that ordinances be published. An ordinance containing an order directing that the ordinance be published once in a city newspaper, which publication was duly made, was held to be sufficiently published.[119]

944; s. c. 3 So. 128. This rule is sometimes abrogated by statutory requirements, as where in Indiana the courts declared that if the defects may be supplied by supplemental ordinance, the latter must be published before it can take effect, the ordinance imposing a penalty for its violation, and revised statutes of Indiana 1881, § 3100 (Burns R. S. 1901, § 3535), requiring such a publication of every penal by-law: Bills v. City of Goshen, 117 Ind. 221, 227; s. c. 20 N. E. 115.

[116] Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Ex parte Bedell, 20 Mo. App. 125, 130; City of St. Louis v. Alexander, 23 Mo. 483, 509; City of St. Louis v. Foster, 52 Mo. 513; City of Cape Girardeau v. Riley, 52 Mo. 424; State v. Heidorn, 74 Mo. 410. But see, contra, City of Emporia v. Norton, 16 Kan. 236.

[117] Higley v. Bunce, 10 Conn. 436; s. c. 10 Conn. 567. This was an ordinance of the town of Canaan. The statute directed that publication should be made in a newspaper printed in the town, or in the town nearest to such town in which a newspaper was printed, or in some other newspaper generally circulated in the town where such by-law was made, as the town should direct. The ordinance in question was published in a newspaper printed in a town nearest to Canaan, and which circulated generally in Canaan, but such publication was made by order of the town clerk wholly without direction from the council. The court held that the town council alone could elect in what newspaper publication should be made.

[118] In re Durkin, 10 Hun (N. Y.) 269.

[119] In re Guerrero, 69 Cal. 88, 93; s. c. 10 Pac. 261. A statute relating to the printing of "legal notices and advertisements" was held to have no application to city ordinances: City of Pittsburg v. Reynolds, 48 Kan. 360; s. c. 29 Pac. 757.

§ 515. (m) The same subject continued.—Under the constitution of Illinois, which provides that "all official writings and the executive, legislative and judicial proceedings shall be published in no other than the English language," it was decided that the city of Chicago could not publish its ordinances at the public expense in a German newspaper.[120] And according to a recent decision in New Jersey, under a statutory requirement that city ordinances shall be published in a German newspaper, they must, in the absence of legislative direction to the contrary, be printed in the English language, since a statute or ordinance, as there declared, has no legal existence except in the language in which it is passed.[121] In Missouri it was held, where the charter provided that all municipal ordinances should be published in some newspaper published in the city, that the provision was sufficiently complied with by distributing printed copies of the ordinances with the copies of a newspaper, and this although the copies were not printed in the city.[122] It is not necessary that the publication should be in a newspaper devoted entirely to current general news. Newspapers devoted exclusively to legal news have been held proper vehicles for the publication of ordinances.[123] If publication in a newspaper printed and published in the city is required, it is sufficient if the newspaper be edited and issued in the city, although its type-work and presswork be done elsewhere.[124] Under a law requiring the publication of the ordinances of a city as an essential of their validity, maps and books referred to in such ordinances need not be published.[125] Where it is prescribed that the publication shall be in a paper of general circulation, it is not considered necessary in Illinois that it be a local paper. Publication in a newspaper issued in a city near at hand, and circulating generally in the corporation, is sufficient.[126]

[120] City of Chicago v. McCoy, 136 Ill. 344; s. c. 26 N. E. 363, Craig, J., dissenting.

[121] "The publication of the translation may be regarded as a proper explanatory adjunct of the English copy, but can not be accepted as a legal substitute for it:" State v. Mayor &c., 54 N. J. L. 111; s. c. 22 Atl. 1004.

[122] Ex parte Bedell, 20 Mo. App. 125, 130.

[123] Kerr v. Hitt, 75 Ill. 51; Kellogg v. Carrico, 47 Mo. 157. See these cases for discussion of meaning of the term "newspaper" in this connection. They hold that any periodical purveying news of interest to any considerable class will suffice.

[124] State v. Mayor &c., 44 N. J. L. 131.

[125] City of Napa v. Easterby, 76 Cal. 222; s. c. 18 Pac. 253.

[126] Tisdale v. President &c., 46 Ill. 9. But if the newspaper had no general circulation in the corporation, such publication would be insufficient: Haskell v. Bartlett, 34 Cal. 281.

§ 516. (n) **Time and proof of publication.**—The provisions as to time and proof of publication are generally construed with liberality by the courts. So where publication for one week is required, a single insertion in a weekly newspaper is sufficient.[127] Where the law required that an ordinance be published for twenty days before taking effect, it was decided in New Jersey that the ordinance would take effect on the twenty-first day after the first publication, and that it was not necessary that twenty days should intervene between the first and last publication.[128] Where publication for three weeks was required in Indiana, the court considered publication for twenty-one days to be necessary, and that three insertions in a weekly paper, covering a period of fifteen days, did not suffice.[129] In a California case it was decided that an ordinance which provided for its publication for five successive days in a daily newspaper was properly published by publication for five successive week-days, although a Sunday intervened on which there was no issue of the paper.[130] As to the proof of publication of ordinances, the cases hold that where there is prima facie evidence of such publication the ordinance will be sustained in the absence of rebutting evidence. So where an ordinance was certified by the recorder as having been passed by the council on a given day, and he testified that it was published in a certain newspaper on a day named, the publication was considered in an Iowa case sufficiently proved, though the newspaper was not shown to be of a general circulation in the town, as required by statute; as that fact would, it was said, be presumed, it being the officer's duty to select such a newspaper.[131] And likewise when the record of an ordinance had a note appended thereto, stating, among other things, that the ordinance was

[127] State v. Hardy, 7 Neb. 377; Commonwealth v. Matthews, 122 Mass. 60; Mayor &c. v. Gear, 27 N. J. L. 265.

[128] Mayor &c. v. Gear, 27 N. J. L. 265.

[129] Loughridge v. City of Huntington, 56 Ind. 253, 260.

[130] Ex parte Fiske, 72 Cal. 125; s. c. 13 Pac. 310. So also, in Taylor v. Palmer, 31 Cal. 240. In Ohio publication in a newspaper printed only on Sunday suffices: Hastings v. Columbus, 42 Ohio St. 585. An ordinance of the city of Detroit provided that it should take immediate effect, and was approved August 2, 1889. The violation thereof by defendant occurred August 10, 1889. The provisions of the city charter relative to the publication of ordinances, and the time of their taking effect, are that "all ordinances shall be published for three successive days, . . . and shall take effect in ten days after their enactment; provided, however, that the common council may fix and prescribe a different period, and that no ordinance shall take effect before one publication thereof." It was held that the ordinance was in force at the time of the act complained of: People v. Keir, 78 Mich. 98; s. c. 43 N. W. 1039.

[131] Town of Bayard v. Baker, 76 Iowa 220; s. c. 40 N. W. 818.

duly published, and the date of its publication, the ordinance was decided to be valid, unless it was shown that said ordinance was not published, and the burden of such proof was held to rest on the defendant.[182] Also where the county-government act of California provided that an ordinance of the board of supervisors should be published once a week in some newspaper published in the county, and that an order entered in the minutes should be prima facie proof that it had been duly published, it was held that the statute did not require that an order for the publication of an ordinance should be made; but if such order was made, and a certain paper designated therein, the fact that the ordinance was published in another paper in the county did not invalidate it.[183]

§ 517. **(o) Title of the ordinance.**—The charter or the general law often prescribes that an ordinance shall have only one subject and that such subject shall be clearly expressed in the title of the ordinance. Provisions such as these are commonly construed with considerable liberality. So an ordinance which provided both for the grading and paving of an alley was not considered invalid under the provision of the charter of the city of St. Louis, relating to the passage of ordinances, which prohibited a bill from containing more than one subject, which should be clearly expressed in its title.[184] And a section providing for the giving of danger signals, and for the equipment of railroad-cars, was held in Missouri to be embraced in the title

[182] Downing v. City of Miltonvale, 36 Kan. 740; s. c. 14 Pac. 281.

[183] County of San Luis Obispo v. Hendricks, 71 Cal. 242; s. c. 11 Pac. 682. See also, as to proof of ordinances, City of Atchison v. King, 9 Kan. 550; Prell v. McDonald, 7 Kan. 426; Moss v. Village of Oakland, 88 Ill. 109; Block v. President &c., 36 Ill. 301.

[184] Weber v. Johnson, 37 Mo. App. 601. A constitutional provision that legislative acts shall embrace but one subject which shall be expressed in the title does not apply to ordinances: Ex parte Haskell, 112 Cal. 412; s. c. 44 Pac. 725. Where the statute provides that an ordinance shall contain but one subject clearly set forth in the title, an ordinance entitled "An ordinance to prevent the carrying or exhibiting of a deadly weapon" is valid, the subject being deadly weapons, or criminal acts connected therewith: Town of Ocean Springs v. Green, 77 Miss. 472; s. c. 27 So. 743. An ordinance to purchase an existing water-works plant, and, in case of a failure, to construct a system of its own and contract a specified indebtedness, is not void as embracing two subjects: Thomas v. City of Grand Junction, 13 Colo. App. 80; s. c. 56 Pac. 665. An enacting clause is not essential to the validity of an ordinance: Chicago &c. R. Co. v. Hines, 82 Ill. App. 488. See contra, Galveston &c. R. Co. v. Harris, 36 S. W. 776. Construction of ordinance as to its sufficiency in expressing its purpose,—see In re Beechwood Ave., 194 Pa. St. 86; s. c. 45 Atl. 127.

of an ordinance entitled "An ordinance to regulate the speed within the city limits of cars and locomotives propelled by steam."[135] And where the board of trustees of a city in California made an order directing certain work to be done on one of the streets, the language used being, "The board order," etc., it was held, under the charter of the city, which provided that the enacting clause of ordinances should be, "The board of trustees of the city of N. do hereby ordain as follows," and a statutory provision that the board might pass "by-laws, resolutions and ordinances,"—that the order referred to was valid, not being an ordinance, and the charter provision concerning the enacting clause being merely directory.[136] But on the contrary, under the Washington statute which authorized the council of a city, by ordinance, to submit to the voters a plan for the construction of water, light and sewerage systems, "either or both," it was decided that an ordinance on these subjects was clearly authorized to be either single, double or triple; and hence it suspended the restriction imposed by the city charter of Seattle, that "no ordinance shall contain more than one subject, which shall be clearly expressed in its title."[137] Also an ordinance, the title of which was to prohibit animals from running at large, but which also provided that no person should keep a dog without paying a tax, and directing the city marshal to kill dogs running at large whose owners had not complied with this regulation and making the owner liable to criminal prosecution for failure to comply therewith, was held to be void under the provisions of the Kansas statutes, that no ordinance should contain more than one subject, which should be clearly expressed in the title.[138] And an ordinance of a city of the second class, whose title and body embraced the two distinct subjects of extending the limits of the city, and of appropriating funds to build a bridge, was considered void under the Kansas statute providing that no ordinance of such city should contain more than one subject, which should be clearly expressed in its title; and this though the latter clause of the ordinance was of no effect because the council had no authority to make the appropriation.[139] An ordinance entitled "An ordinance controlling the keeping and use of jacks, stallions and bulls," which prohibits the use of such animals in public places, was thought in Iowa not to go beyond the object and scope of its title.[140]

[135] Bergman v. St. Louis &c. R. Co., 88 Mo. 678; s. c. 1 S. W. 384.

[136] City of Napa v. Easterby, 76 Cal. 222; s. c. 18 Pac. 253.

[137] Yesler v. City of Seattle, 1 Wash. 308; s. c. 25 Pac. 1014.

[138] Stebbins v. Mayer, 38 Kan. 573; s. c. 16 Pac. 745.

[139] Missouri Pac. R. Co. v. City of Wyandotte, 44 Kan. 32; s. c. 23 Pac. 950.

[140] Town of Bayard v. Baker,

§ **518.** (p) **Record of the ordinance.**—The same principles apply in discussing the necessity of recording ordinances that have been set forth in connection with our treatment of their signature by the mayor or other presiding officer. If the charter or other statute makes it essential that the ordinance should be recorded in order to be valid, it is necessary that it should be recorded. If, however, the language of the charter or act, read in connection with the other legislation on the subject, does not appear to make the recording of the ordinance an essential prerequisite, the provisions relating thereto are considered as directory only. Accordingly when a city charter provided that all ordinances should be recorded, within thirty days after their passage, in a book to be provided for the purpose, "and to be kept by the mayor" for inspection, without charge, of all persons interested, and that they should not be valid or in force until so recorded, it was decided that an ordinance recorded in a book provided for the purpose, and temporarily kept, at the mayor's request, in the city office of the court-house, at a short distance from his office, because he had no safe at his office, was valid.[141] And when an incorporated town was changed into a city, and the statute prescribed that the existing town ordinances should continue valid, provided that they should be recorded within four months thereafter, the provision was considered merely directory, and the town ordinances were upheld

76 Iowa 220; s. c. 40 N. W. 818. An ordinance concerning certain licenses in the city of Louisville is held sufficiently specific as to title, in Elliott v. City of Louisville, 101 Ky. 262; s. c. 19 Ky. L. 414; 40 S. W. 690. The provision of the constitution prohibiting any bill from containing more than one subject which shall be expressed in the title, is not applied to city ordinances: City of Topeka v. Raynor, 60 Kan. 860 (mem.); s. c. 58 Pac. 557. Cf. Ex parte Haskell, 112 Cal. 412; s. c. 44 Pac. 725; Green v. City of Indianapolis, 25 Ind. 490; Baumgartner v. Hasty, 100 Ind. 575; s. c. 50 Am. R. 830; City of Humboldt v. McCoy, 23 Kan. 249; People v. Wagner, 86 Mich. 594; s. c. 49 N. W. 609. It is not essential to the validity of an ordinance that it shall be preceded by a title such as is required in statutes enacted by the legislature: Callaghan v. Town of Alexandria, 52 La. An. 1013; s. c. 27 So. 540.

[141] Beaumont v. City of Wilkes-Barre, 142 Pa. St. 198; s. c. 21 Atl. 888. A statute requiring that all ordinances shall, within a reasonable time, be recorded, signed, etc., attested, etc., is directory: Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138. An ordinance not recorded pursuant to the requirement of a charter which is merely directory is not void: Allen v. City of Davenport, 107 Iowa 90; s. c. 77 N. W. 532; Quint v. City of Merrill, 105 Wis. 406; s. c. 81 N. W. 664. An ordinance is not invalid because the minutes do not show the mayor was present, when the ordinance was signed by him: Aurora Water Co. v. City of Aurora, 129 Mo. 540; s. c. 31 S. W. 946.

although unrecorded.[142] But where a city charter required that all ordinances should be recorded, and that no ordinance should be carried into operation in less than two weeks after the same should be so recorded, an unrecorded ordinance has been held to be void.[143] Apart, however, from the validity of the ordinance, the municipal records of the transactions of the municipal council are the best evidence of those transactions.[144] It is therefore important that accurate and legible record be made of every legislative act of the municipality. The recording of an ordinance is, however, a purely ministerial act. It may be performed by a subordinate or deputy, and a clerical error will not operate so as to invalidate any ordinance properly and legally enacted.[145] The neglect of a ministerial duty is not deemed fatal to the validity of municipal proceedings.[146] Whatever is said as to the necessity of recording ordinances will apply equally well to the advisability of recording every resolution or regulation which the council may make. But contractual relations may be created by the mere passage of a resolution, and will be unaffected by its record or non-record.[147]

§ 519. **Validity in respect of matter—(a) Constitutionality.**—The power of a municipal council to enact by-laws being delegated by the legislature can not, of course, be more extensive than the power of the delegating body. Consequently the by-laws or ordinances enacted by the council must not be in contravention of the constitution of the United States or of the state. Hence a by-law impairing the obligation of a contract is void as being unconstitutional.[148] And if an ordinance is accepted, and thereby a contract is created, subsequent or-

[142] Trustees &c. v. City of Erie, 31 Pa. St. 515; Amey v. Mayor &c., 24 How. 364.

[143] Verona's Appeal, 108 Pa. St. 83.

[144] Stewart v. City of Clinton, 79 Mo. 603; Parsons v. Trustees, 44 Ga. 529; Baker v. Schofield, 58 Ga. 182.

[145] Hutchinson v. Pratt, 11 Vt. 402; Houston &c. R. Co. v. Odum, 53 Tex. 343.

[146] Stevenson v. Bay City, 26 Mich. 44; Conboy v. Iowa City, 2 Iowa 90. Acts requiring record to be made of ordinances will usually be held directory, and failure to observe will not invalidate the ordinance: National Bank &c. v. Town of Grenada, 41 Fed. 87. See also, Terre Haute &c. R. Co. v. Voelker, 129 Ill. 540; s. c. 22 N. E. 20; Ladd v. City of East Portland, 18 Or. 87; s. c. 22 Pac. 533; Western &c. R. Co. v. Young, 83 Ga. 512; s. c. 10 S. E. 197.

[147] Parr v. President &c., 72 N. Y. 463.

[148] Illinois Conf. Female College v. Cooper, 25 Ill. 133; Haywood v. Mayor &c., 12 Ga. 404; Saving Society v. Philadelphia, 31 Pa. St. 175; Davenport &c. Co. v. City of Davenport, 13 Iowa 229. An ordinance which impairs a contract is cognizable under the United States constitution and laws: Walla Walla City v. Walla Walla Water Co., 172 U. S. 1; s. c. 19 S. Ct. 77. An ordinance attempting to impair the existing rights of a person under a contract is unconstitutional: Neill v. Gates, 152 Mo. 585; s. c. 54 S. W. 460.

dinances can not impair its obligation.[149] So an ordinance by which a license tax was imposed on owners of tugboats running between New Orleans and the Gulf of Mexico was declared void as being a regulation of commerce between the states.[150] But a penal ordinance of Chicago, pronouncing steamboats emitting dense smoke to be nuisances, is reasonable and not unconstitutional as affecting vessels on the Chicago river.[151] An ordinance making it unlawful to require or permit a day-laborer or mechanic to work on the public works more than eight hours in a day is unconstitutional.[152] An ordinance which prohibits any person, firm or corporation, from selling, or exposing for sale, any meat and other specified articles in a place where dry-goods and other specified property are sold is unconstitutional and void.[153]

§ **520. (b) The same subject continued.**—Likewise ordinances giving the municipal authorities undue power in allowing or withholding licenses to laundries, by which the Chinese were discriminated against, were held void as being in contravention of the fourteenth amendment.[154] A city ordinance of St. Louis affixing a penalty for

[149] People v. Chicago &c. R. Co., 118 Ill. 113; s. c. 7 N. E. 116; Kansas City v. Corrigan, 86 Mo. 67. Where a license is granted and acted on and money expended under it a subsequent ordinance prohibiting the use of part of the streets covered by the license is a nullity: Harvey v. Aurora &c. R. Co., 186 Ill. 283; s. c. 57 N. E. 857.

[150] Moran v. New Orleans, 112 U. S. 69; s. c. 5 S. Ct. 38. An occupation tax against all persons selling, or offering for sale, goods within the city is unconstitutional and void as to non-residents: Baxter v. Thomas, 4 Okla. 605; s. c. 46 Pac. 479.

[151] Harmon v. City of Chicago, 110 Ill. 400; s. c. 51 Am. R. 698.

[152] City of Seattle v. Smyth, 22 Wash. 327; s. c. 60 Pac. 1120.

[153] City of Chicago v. Netcher, 183 Ill. 104; s. c. 55 N. E. 707.

[154] Yick Wo v. Hopkins, 118 U. S. 356; s. c. 6 S. Ct. 1064; In re Tie Loy, 26 Fed. 611. Ordinances of similar character, where reasonable, have been upheld: Soon Hing v. Crowley, 113 U. S. 703; s. c. 5 S. Ct. 730; Barbier v. Connolly, 113 U. S. 27; s. c. 5 S. Ct. 357. An ordinance providing that license shall not be issued to sell intoxicating liquors, except on petition of a certain number of property-owners in the block, is not void as discriminating between different blocks or different persons: Martens v. People, 186 Ill. 314; s. c. 57 N. E. 871. An ordinance which is not enforced against every one is not discriminating: City of Denver v. Girard, 21 Colo. 447; s. c. 42 Pac. 662. But an ordinance which discriminates between persons of the same class is void: City of Peoria v. Gugenheim, 61 Ill. App. 374. Where the statutes impose upon the municipality the duty of keeping highways free from obstructions of snow, or other things that impede travel or render it dangerous, an ordinance which imposes upon property-owners the duty of keeping sidewalks in front of their premises free from snow imposes a burden which does not bear upon all

carrying concealed weapons was not considered unconstitutional.[155] And a penalty for violating a town ordinance has been decided not to be a debt within the constitutional prohibition against imprisonment for debt.[156] A Minnesota city ordinance directing a certain officer to arrest and detain until the extinguishment of a fire any person refusing to obey his directions was held unconstitutional as depriving the sufferer of his liberty without process of law or trial by jury.[157] And an ordinance of the city of Shreveport in Louisiana giving to one sect a privilege which it denied to another was held unconstitutional and void.[158] But constitutional provisions securing freedom of religious worship were not designed to prevent the adoption of reasonable rules and regulations for the use of streets and public places, and a member of a religious organization while playing on a cornet in a street-parade and creating no disturbance is an itinerant musician within the meaning of an ordinance relating to such persons and is not protected by the fact that his act was done as a matter of religious worship only.[159]

§ 521. **(c) Consistency with statute and charter.**—As a municipal corporation can not enact valid laws in contravention of the constitution of the United States or of the state, so it can not enact laws contrary to the statute of the state. For a legislature to delegate powers which might be used in hostility to the general laws of the state would be a felo de se that might render all general legislation inoperative within the limits of the corporation. Thus the ordinances of a city council imposing upon the city solicitor the duties which are required by statute to be performed by the receiver of taxes were held in a recent New Jersey case to be unauthorized and illegal.[160] In the same state, under a statute authorizing the mayor "in his discretion * * * to impose a fine not exceeding twenty dollars" for a certain offense, an ordinance prescribing a fine of not less than three nor more than twenty dollars for the same offense was held to be void, as an additional limitation of the mayor's discretion.[161] And in gen-

citizens alike, and is a denial of the equal protection of the law; since a sidewalk is part of the highway: State v. Jackman, 69 N. H. 318; s. c. 41 Atl. 347; 42 L. R. A. 438.

[156] City of St. Louis v. Vert, 84 Mo. 204.

[156] Hardenbrook v. Town of Ligonier, 95 Ind. 70, and cases there cited.

[157] Judson v. Reardon, 16 Minn. 431. An ordinance which is an invasion of the right of personal liberty is void: Ex parte Smith, 135 Mo. 223; s. c. 36 S. W. 628.

[158] City of Shreveport v. Levy, 26 La. An. 671.

[159] Commonwealth v. Plaisted, 148 Mass. 375; s. c. 19 N. E. 224.

[160] State v. City of Camden, 50 N. J. L. 87; s. c. 11 Atl. 137.

[161] Landis v. Borough of Vineland, 54 N. J. L. 75; s. c. 23 Atl. 357.

eral all ordinances which irreconcilably conflict either with the charter or with the state statutes are void.[162]

§ **522. (d) The same subject continued.**—But the by-laws of a municipal corporation, when authorized by its charter, have the effect of a special law of the legislature, and supersede to a great degree the general law within the territorial limits of such corporation.[163] This question is discussed in an able and thorough opinion in a Vermont case, where the charter of a village granted to the village certain powers of licensing eating-houses repugnant to the general statute in force at the time of passage of the charter. The court said: "If the by-law is authorized by the charter it has the effect of a special law of the legislature within the limits of the village and supersedes the general law on the subject of victualing-houses therein; for the charter giving the village power to pass the by-law inconsistent with and repugnant to the general law operated to repeal the general law within the territorial limits of the village, on the principle that provisions of different statutes which are in conflict with one another can not stand together; and in the absence of anything showing a different intent on the part of the legislature, general legislation upon a particular subject must give way to later inconsistent special legislation upon the same subject."[164] In Louisiana, however, it has

[162] State v. Georgia Medical Society, 38 Ga. 608; State v. Brittain, 89 N. C. 574; Weith v. City of Wilmington, 68 N. C. 24; Flood v. State, 19 Tex. App. 584; Bohmy v. State, 21 Tex. App. 597; s. c. 2 S. W. 886; Wood v. City of Brooklyn, 14 Barb. (N. Y.) 425; Cowen v. Village of West Troy, 43 Barb. (N. Y.) 48; Mayor &c. v. Nichols, 4 Hill (N. Y.) 209; Mays v. City of Cincinnati, 1 Ohio St. 268; City of Canton v. Nist, 9 Ohio St. 439; Carr v. City of St. Louis, 9 Mo. 191; Baldwin v. Green, 10 Mo. 410; Town of Petersburg v. Metzker, 21 Ill. 205; Southport v. Ogden, 23 Conn. 128; Andrews v. Union &c. Ins. Co., 37 Maine 256; State v. Mayor &c., 49 N. J. L. 311; s. c. 8 Atl. 295; Lozier v. Newark, 48 N. J. L. 452; s. c. 2 Atl. 815; State v. Mayor &c., 47 N. J. L. 117; City of Cape Girardeau v. Riley, 72 Mo. 220; Dubois v. City Council &c., Dudley (Ga.) 30. Where the statute provides that the city council shall not have power to pass any ordinance exempting any person from the operation of an ordinance, or municipal regulation, an ordinance requiring a license from all milk-sellers except those selling less than twenty quarts a day is invalid: Gray v. Mayor &c., 2 Marv. (Del.) 257; s. c. 43 Atl. 94.

[163] Village of St. Johnsbury v. Thompson, 59 Vt. 300; s. c. 9 Atl. 571; McPherson v. Village of Chebanse, 114 Ill. 46; s. c. 28 N. E. 454; Covington v. City of East St. Louis, 78 Ill. 548; State v. Dwyer, 21 Minn. 512; State v. Clarke, 1 Dutch. (N. J.) 54; Goddard, Petitioner, 16 Pick. (Mass.) 504; Commonwealth v. Patch, 97 Mass. 221.

[164] Village of St. Johnsbury v. Thompson, 59 Vt. 300; s. c. 9 Atl. 571; citing 1 Dillon Munic. Corp., § 88; 4 Kent Com. 466, n.; In re Snell, 58 Vt. 207; s. c. 1 Atl. 566; State v. Mayor &c., 33 N. J. L. 57;

been decided that a grant of power conferred by the legislature in the charter of a municipal corporation, to pass and enforce ordinances to suppress and punish the sale of adulterated drinks, was not recalled by a subsequent general statute providing for the prosecution of the same offense throughout the state.[165] In many cases it has been held that this power given by charter can be subsequently revoked by the legislature; and at any rate both statute and ordinance may stand together if not fatally inconsistent.[166]

§ 523. **(e) Consistency with general penal law.**—It would seem to flow as a necessary consequence from the principles enunciated in the last section that the corporation can not pass ordinances imposing further penalties for an act which is already a penal offense under the general laws of the state; but on this question there is great and serious conflict of opinion in the cases. It is the opinion of Judge Cooley that the clear weight of authority is to the effect that an act may be a penal offense under the laws of the state and that further penalties, under proper legislative authority, may be imposed for its commission by municipal by-laws, and the enforcement of the one would not preclude the enforcement of the other.[167] The arguments of those who hold that municipal ordinances may impose further penalties for the commission of acts already penal offenses under the general statutes are set forth by Collier, C. J., in an Alabama case cited by Judge Cooley, where a city ordinance imposed a fine for assault and battery committed within the city limits, and its validity was questioned. He said: "The object of the power conferred by the charter and the purpose of the ordinance itself was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to inflict punishment, and we are not informed that they have attempted to arrogate it. It is altogether immaterial whether the state tribunal has interfered and exercised its powers in bringing the defendant before it to answer for the assault and battery; for whether he has thus been punished or acquitted is alike unim-

State v. Clarke, 25 N. J. L. 54; Davies v. Fairbairn, 3 How. 636; State v. Clarke, 54 Mo. 17; Mark v. State, 97 N. Y. 572.

[165] State v. Labatut, 39 La. An. 513; s. c. 2 So. 550.

[166] People v. Hanrahan, 75 Mich. 611; s. c. 42 N. E. 1124; Mayor &c. v. Allaire, 14 Ala. 400; City of St. Louis v. Cafferata, 24 Mo. 94; City of St. Louis v. Bentz, 11 Mo. 61; Rogers v. Jones, 1 Wend. (N. Y.) 237; City of Elk Point v. Vaughn, 1 Dak. 113; s. c. 46 N. W. 577.

[167] Cooley Const. Lim. 239.

portant. The offense against the corporation and the state, we have seen, are distinguishable and wholly disconnected, and the prosecution at the suit of each proceeds upon a different hypothesis: the one contemplates the observance of the peace and good order of the city; the other has a more enlarged object in view—the maintenance of the peace and dignity of the state."[168] There are many cases upholding the propositions set forth in the last-cited authority; indeed, the number of American cases supporting this view far exceeds the number of the cases which hold the contrary. Thus, it has been decided in New Jersey that certain acts which are indictable as offenses against the state may also be by the legislature constituted offenses against the police regulations of municipalities so as to subject the offender to the mode of trial incident to proceedings for the violation of ordinances, and that where in such cases the legislature has not made special provision for a trial by jury it can not be demanded as matter of right.[169] Conformably to these views it was held in Missouri that although by the state statutes it was a misdemeanor to cruelly beat any domestic animal, municipal corporations might prohibit the same act by ordinance and punish offenders.[170] And in Arkansas, although carrying concealed weapons, disturbing the peace, and selling liquor on Sunday are each made offenses by statute, the power to prohibit the same acts was considered to be given cities and towns by the statute authorizing the passage of ordinances, not inconsistent with the laws of the state, to suppress disorderly conduct, provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the corporation and its inhabitants.[172] Likewise in Indiana the statute which

[168] Mayor &c. v. Allaire, 14 Ala. 400.

[169] State v. Inhabitants &c., 51 N. J. L. 498; s. c. 18 Atl. 116. See also, to the same effect, City of Indianapolis v. Huegele, 115 Ind. 581; s. c. 18 N. E. 172; Rogers v. Jones, 1 Wend. (N. Y.) 237; McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516; Mayor &c. v. Hyatt, 3 E. D. Smith (N. Y.) 156; Polinsky v. People, 11 Hun (N. Y.) 390; People v. Stevens, 13 Wend. (N. Y.) 341; Blatchley v. Moser, 15 Wend. (N. Y.) 215; City of St. Louis v. Cafferata, 24 Mo. 94; State v. Gordon, 60 Mo. 383; City of St. Louis v. Schoenbusch, 95 Mo. 618; s. c. 8 S. W. 791; City of St. Louis v. Bentz, 11 Mo. 61; State v. Crummery, 17 Minn. 72; State v. Oleson, 26 Minn. 507; s. c. 5 N. W. 959; City of Elk Point v. Vaughn, 1 Dak. 113; s. c. 46 N. W. 577; Chicago Packing Co. v. City of Chicago, 88 Ill. 221; Hankins v. People, 106 Ill. 628; McRea v. Mayor &c., 59 Ga. 168; Town of Bloomfield v. Trimble, 54 Iowa 399; s. c. 6 N. W. 586.

[170] City of St. Louis v. Schoenbusch, 95 Mo. 618; s. c. 8 S. W. 791.

[172] Van Buren v. Wells, 53 Ark. 368; s. c. 14 S. W. 38. See also, State v. Inhabitants &c., 51 N. J. L. 498; s. c. 18 Atl. 116.

prohibited towns or cities from making acts punishable by ordinance which are made public offenses and punishable by the state did not, it was held, apply to an ordinance making it an offense to sell intoxicating liquors within the limits of the city without first obtaining a city license, on the ground, however, that such act was not an offense against the state law.[173]

§ 524. (f) **The same subject continued.**—With due deference to the weighty opinion of Judge Cooley, and to the mass of authorities submitted by him in support of his opinion, to the mind of the writer the cases holding the contrary view though fewer in number are better considered, and more truly founded on principle. In a Missouri case it was decided that one who had been punished under a municipal ordinance could not be afterwards indicted under the state law. The court said: "The constitution forbids that a person shall be twice punished for the same offense. To hold that a party can be prosecuted for an act under the state laws after he had been punished for the same act by the municipal corporation within whose limits the act was done would be to overthrow the power of the general assembly to create corporations to aid in the management of the affairs of the state. For a power in the state to punish after a punishment had been inflicted by the corporate authorities could only find a support in the assumption that all the proceedings on the part of the corporation were null and void. The circumstance that the municipal authorities have not exclusive jurisdiction over the acts which constitute offenses within their limits does not affect the question. It is enough that their jurisdiction is not excluded. If it exists—although it may be concurrent—if it is exercised, it is valid and binding as long as it is a constitutional principle that no man may be punished twice for the same offense."[174] The logic of these considerations seems to show irresistibly that to permit the same act to be punished under the general law and under an ordinance must either lead to a violation of the constitution or must cause an election to be made between the two methods of procedure, so that in case the act is punished under one provision the other becomes inoperative and void. This

[173] City of Frankfort v. Aughe, 114 Ind. 77; s. c. 15 N. E. 802.

[174] State v. Cowan, 29 Mo. 330. See also, City of Corvallis v. Carlile, 10 Or. 139; State v. Welch, 36 Conn. 215; Menken v. City of Atlanta, 78 Ga. 668; s. c. 2 S. E. 559; Jenkins v. Mayor &c., 35 Ga. 145; Vason v. City of Augusta, 38 Ga. 542; State v. Corporation of Savannah, 1 T. U. P. Charl. (Ga.) 235; s. c. 4 Am. D. 708; Slaughter v. People, 2 Doug. (Mich.) 334; State v. Keith, 94 N. C. 933; Town of Washington v. Hammond, 76 N. C. 33.

would produce an anomalous condition of criminal procedure in such cases that could hardly have been contemplated either by the legislature or the city council. In a well-considered North Carolina decision it was held that an ordinance of a city or town which made an act, which was punishable as a criminal offense under the general law of the state, an offense against the town, punishable by fine or imprisonment, was void.[175] On the same line authority given to a city in Oregon "to prevent and restrain disturbances" was not thought to include the right to take jurisdiction and punish for the crime of an assault with a dangerous weapon.[176] It is not uncommonly provided by statute that acts which are public offenses punishable by statute shall not be punishable by city ordinance. In such cases there is no question that such an ordinance is void.[177] Where

[175] State v. Keith, 94 N. C. 933. Where there is a penal statute prescribing a punishment for certain acts an ordinance subsequently passed prescribing a penalty for the same acts is invalid in the absence of an express provision granting the city power to pass it: Kassell v. Mayor &c., 109 Ga. 491; s. c. 35 S. E. 147. An ordinance which is identical in terms with the penal code is void. A city has no power to pass an ordinance covering the same acts as are covered by the penal code: Ex parte Wickson (Tex. Civ. App.), 47 S. W. 643.

[176] Walsh v. City of Union, 13 Or. 589; s. c. 11 Pac. 312.

[177] So, under revised statutes of Indiana 1881, § 1640 (Burns R. S. Ind. 1901, § 1709), providing that any act made a public offense against the state, and punishable by any statute, shall not be made punishable by any city ordinance, the wrongful interference with a policeman in making an arrest, prohibited by an ordinance of the city of Indianapolis, is not punishable by that ordinance; such act being made a public offense, and punishable by § 10 of the metropolitan police act (acts 1883, p. 89, acts 1897, p. 90, Burns' R. S. Ind. 1901, § 3726), providing that any person who shall, in any manner, interfere with or interrupt the board of metropolitan police commissioners in any act of theirs while in the legal discharge of their duties, or of the police force, shall, upon conviction, be fined, etc.: City of Indianapolis v. Huegele, 115 Ind. 581; s. c. 18 N. E. 172. To the same effect is a California case. Section 3 of ordinance No. 192 of the city of Stockton, California, makes it unlawful for two or more persons to assemble, be or remain in any room or place for the purpose of smoking opium, or inhaling the fumes thereof. Section 307 of the state penal code declares that every person who visits or resorts to any place where opium, or any of its preparations, is sold or given away to be smoked at such place, for the purpose of smoking opium, or its said preparations, is guilty of a misdemeanor, and punishable by fine or imprisonment. It was held that the ordinance, in so far as it made criminal precisely the same acts that were declared a crime by the state law, was in conflict therewith; and under constitution, art. 11, § 11, limiting the power of municipal corporations to the passage of ordinances not in conflict with general laws, was void, and that persons accused of assembling in a room for the purpose of smoking opium therein could not be prosecuted

there is no ordinance shown justifying a sentence to hard labor the court will presume that any ordinance passed by the council conformed to the statute, and will modify the judgment to conform to it.[178] The fact that a general statute covers the same subject as an ordinance does not render the latter invalid.[179] But not so if they are in conflict.[180] The legislature has no power to authorize the passage of ordinances contrary to the general laws of the state;[181] and so, ordinances which violate subsequently-enacted statutes are not enforceable;[182] but it may make additional requirements.[183] An ordinance is not oppressive when in harmony with general law.[184]

§ **525. (g) Reasonableness of the ordinance.**—It is a well-settled principle that a municipal by-law or ordinance must be reasonable. If it be not reasonable, the courts will decline to enforce it, and it will be declared void as matter of law.[185] But, as was said by Nib-

thereunder: In re Sic, 73 Cal. 142; s. c. 14 Pac. 405; Ex parte Solomon, 91 Cal. 440; s. c. 27 Pac. 757; In re Ah You, 88 Cal. 99; s. c. 25 Pac. 974.

[178] City of Lead v. Klatt, 13 S. D. 140; s. c. 82 N. W. 391.

[179] In re John, 55 Kan. 694; s. c. 41 Pac. 956. See contra, State v. McCoy, 116 N. C. 1059; s. c. 21 S. E. 690. But see Board of Police v. Giron, 46 La. An. 1364; s. c. 16 So. 190. It has been held, however, that a city ordinance prescribing a fine of from $5 to $100 is not void where the state law fixes a penalty for the same offense at not exceeding $1,000: City of St. Joseph v. Vesper, 59 Mo. App. 459. And see Kansas City v. Hallett, 59 Mo. App. 160.

[180] State v. Sherrard, 117 N. C. 716; s. c. 23 S. E. 157; Abram v. State (Tex. Civ. App.), 28 S. W. 818.

[181] Howlett v. Camp, 115 Ala. 499; s. c. 22 So. 137.

[182] Strauss v. Mayor &c., 97 Ga. 475; s. c. 25 S. E. 329.

[183] Foster v. Board &c., 102 Cal. 483; s. c. 37 Pac. 763.

[184] State v. Payssan, 47 La. An. 1029; s. c. 17 So. 481. An ordinance for drainage into Lake Michigan is not against public policy and not, therefore, void: Rich v. City of Chicago, 152 Ill. 18; s. c. 38 N. E. 255. An ordinance passed by a council in violation of its rules is void: Swindell v. State, 143 Ind. 153; s. c. 42 N. E. 528. The constitution of Idaho prohibits ordinances in conflict with the general law: In re Ridenbaugh (Idaho), 49 Pac. 12; Port Clinton &c. v. Shafer, 5 Pa. Dist. Rep. 583. A charter which requires the passage of an ordinance over the mayor's veto on the "next regular meeting," invalidates an ordinance passed at the same meeting to which the veto is returned: Gleason v. Peerless Mfg. Co., 37 N. Y. S. 267; s. c. 1 App. Div. (N. Y.) 257.

[185] Atkinson v. Goodrich Transp. Co., 60 Wis. 141; s. c. 18 N. W. 764; Clason v. City of Milwaukee, 30 Wis. 316; Barling v. West, 29 Wis. 307; People v. Throop, 12 Wend. (N. Y.) 183; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; People v. City of Rochester, 44 Hun (N. Y.) 166; Mayor &c. v. Beasly, 1 Humph. (Tenn.) 232; Mayor &c. v. Winfield, 8 Humph. (Tenn.) 707; Long v. Taxing District &c., 7 Lea (Tenn.) 134; Whyte v. Mayor &c., 2 Swan (Tenn.) 364; State v. Mayor &c., 37 N. J. L. 348; State v. Lowery, 49 N. J. L. 391; s. c. 8 Atl. 513; State v.

would produce an anomalous condition of crimin[illegible] case: "An such cases that could hardly have been contempl[illegible] is expressly au- legislature or the city council. In a well-con[illegible] to declare an ordi- lina decision it was held that an ordinance o[illegible]tically restricted to made an act, which was punishable as a c[illegible]thing on the subject- general law of the state, an offense agai[illegible] cases in which the ordi- fine or imprisonment, was void.[175] On [illegible]dental power of the corpora- to a city in Oregon "to prevent and [illegible]ature expressly authorizes the thought to include the right to ta[illegible] ordinance, that ordinance will be crime of an assault with a dan[illegible] of the court as to its reasonableness monly provided by statute tha[illegible] principle was fully discussed in a cele- able by statute shall not b[illegible] cases there is no questior[illegible]

[175] State v. Keith, 94 [illegible] Kip [illegible] L. 298; Where there is a pen[illegible] J. Eq. 77; scribing a punishm[illegible] Trotter, 136 Ill. acts an ordina[illegible] Tugman v. passed prescribi[illegible] Ill. 405; City of same acts is [illegible] 58 Ill. 102; In re of an expre[illegible] s. c. 30 N. W. city powe[illegible] Harrisburg, 2 Grant Mayor & [illegible] Commissioners &c. 147. [illegible] Liberties Gas Co., 12 cal [illegible] O'Maley v. Borough of vo[illegible] 96 Pa. St. 24; Kneedler v. a[illegible] of Norristown, 100 Pa. St. [illegible] Commonwealth v. Robertson, 5 [illegible] (Mass.) 438; City of Boston v. Shaw, 1 Met. (Mass.) 130; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Steffee, 7 Bush (Ky.) 161; Ex parte Frank, 52 Cal. 606; Ex parte Chin Yan, 60 Cal. 78; State v. Freeman, 38 N. H. 426; Mayor &c. v. Radecke, 49 Md. 217; Kirkham v. Russell, 76 Va. 956; Waters v. Leech, 3 Ark. 110; Davis v. Town of Anita, 73 Iowa 325; s. c. 35 N. W. 244; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Meyers v. Chicago &c. R. Co., 57 Iowa 555; s. c. 10 N. W. 896; Gilham v. Wells, 64 Ga. 192; City of Cape Girardeau v. Riley, 72 Mo. 220. For English cases, see 2 Kyd Corp. 107; Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Master &c. v. Brooking, 3 Q. B. 95; Elwood v. Bullock, 6 Q. B. 383. In the last-cited case an ordinance imposing unreasonable restrictions on the licensing of booths was held invalid. The reasonableness and sufficiency of an ordinance are not to be tested in all cases by its application to extreme cases: Commonwealth v. Plaisted, 148 Mass. 375, 382; s. c. 19 N. E. 224. Perhaps a proper construction might not admit of their being included within it: Commonweolth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146. See also, Walker v. City of Aurora, 140 Ill. 402; s. c. 29 N. E. 741.

[186] Coal Float v. City of Jeffersonville, 112 Ind. 15, 19; s. c. 13 N. E. 115.

[187] Coal Float v. City of Jeffersonville, 112 Ind. 15; s. c. 13 N. E. 115; Chamberlain v. City of Evansville, 77 Ind. 542; City of Brooklyn v. Breslin, 57 N. Y. 591; State v. Treasurer &c., 44 N. J. L. 350; State v. Clarke, 54 Mo. 17; City of Peoria v. Calhoun, 29 Ill. 317; City of St. Paul v. Colter, 12 Minn. 41; Haynes v. City of Cape May, 50 N. J. L. 55; s. c. 13 Atl. 231; District of Columbia v. Waggaman, 4 Mackey 328. A reasonable penalty being prescribed

d extreme case in Missouri. The charter of the city of St. rized the city to regulate bawdy-houses. The court con- ovision to allow the passage of an ordinance licensing d in discussing the reasonableness of such an ordi- "It is naked assumption to say that any matter ture is against public policy. The best indica- are to be found in the enactments of the legis- at such a law is of unusual tendency is disrespectful are, who, no doubt, designed to promote the morals of the citizens. Whether the ordinance in question is cal- o promote the object is a question with which the courts o concern."[188] But the fact that an ordinance is passed under wer conferred by statute does not preclude the question of reasonableness, where it leaves the details to be fixed by the ordinance, for the reason that the exercise of a power may be unreasonable. The reasonableness of the power granted is one thing, and the reasonableness of the exercise of that power quite another thing.[189] The rule that an ordinance specifically authorized by a statute can not be impeached for unreasonableness does not apply to an ordinance for the construction of a sewer, passed under a general power over the subject. Where a grant of power is general in its nature and its exercise may either be reasonable, or arbitrarily unreasonable and oppressive, the grant is subject to the implied limitation that its exercise shall be reasonable, and courts have power to pass upon and determine that question.[190]

in an ordinance, it is not unconstitutional because the statute under which it is enacted does not limit the penalty the ordinance may impose: State v. Carpenter, 60 Conn. 97; s. c. 22 Atl. 497. It is a part of the common law that an ordinance not expressly authorized must be reasonable: Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; Milliken v. City Council &c., 54 Tex. 388; Napman v. People, 19 Mich. 352; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37; City of Grand Rapids v. Newton, 111 Mich. 48; s. c. 69 N. W. 84; 35 L. R. A. 226; Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138; Town of Darlington v. Ward, 48 S. C. 570; s. c. 26 S. E. 906; Skaggs v. City of Martinsville, 140 Ind. 476; s. c. 39 N. E. 241; Kansas City v. Trieb, 76 Mo. App. 478.

[188] State v. Clarke, 54 Mo. 17, 36. See Dillon Munic. Corp., § 328.

[189] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; City of St. Paul v. Colter, 12 Minn. 41; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; State v. Treasurer &c., 44 N. J. L. 350.

[190] Title &c. Co. v. City of Chicago, 162 Ill. 505; s. c. 44 N. E. 832; Village of Hyde Park v. Carton, 132 Ill. 100; s. c. 23 N. E. 590; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

lack, J., in an able opinion delivered in an Indiana case: "An ordinance can not be held to be unreasonable which is expressly authorized by the legislature. The power of a court to declare an ordinance unreasonable and therefore void is practically restricted to cases in which the legislature has enacted nothing on the subject-matter of the ordinance, and consequently to cases in which the ordinance was passed under the supposed incidental power of the corporation merely."[186] So when the legislature expressly authorizes the municipality to pass any certain ordinance, that ordinance will be upheld, regardless of the opinion of the court as to its reasonableness or unreasonableness.[187] This principle was fully discussed in a cele-

Mayor &c., 47 N. J. L. 286; State v. East Orange, 41 N. J. L. 127; Kip v. Mayor &c., 26 N. J. L. 298; Dayton v. Quigley, 29 N. J. Eq. 77; City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359; Tugman v. City of Chicago, 78 Ill. 405; City of Clinton v. Phillips, 58 Ill. 102; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Commissioners &c. v. Northern Liberties Gas Co., 12 Pa. St. 318; O'Maley v. Borough of Freeport, 96 Pa. St. 24; Kneedler v. Borough of Norristown, 100 Pa. St. 368; Commonwealth v. Robertson, 5 Cush. (Mass.) 438; City of Boston v. Shaw, 1 Met. (Mass.) 130; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Steffee, 7 Bush (Ky.) 161; Ex parte Frank, 52 Cal. 606; Ex parte Chin Yan, 60 Cal. 78; State v. Freeman, 38 N. H. 426; Mayor &c. v. Radecke, 49 Md. 217; Kirkham v. Russell, 76 Va. 956; Waters v. Leech, 3 Ark. 110; Davis v. Town of Anita, 73 Iowa 325; s. c. 35 N. W. 244; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Meyers v. Chicago &c. R. Co., 57 Iowa 555; s. c. 10 N. W. 896; Gilham v. Wells, 64 Ga. 192; City of Cape Girardeau v. Riley, 72 Mo. 220. For English cases, see 2 Kyd Corp. 107; Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Master &c. v. Brooking, 3 Q. B. 95; Elwood v. Bullock, 6 Q. B. 383. In the last-cited case an ordinance imposing unreasonable restrictions on the licensing of booths was held invalid. The reasonableness and sufficiency of an ordinance are not to be tested in all cases by its application to extreme cases: Commonwealth v. Plaisted, 148 Mass. 375, 382; s. c. 19 N. E. 224. Perhaps a proper construction might not admit of their being included within it: Commonwealth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146. See also, Walker v. City of Aurora, 140 Ill. 402; s. c. 29 N. E. 741.

[186] Coal Float v. City of Jeffersonville, 112 Ind. 15, 19; s. c. 13 N. E. 115.

[187] Coal Float v. City of Jeffersonville, 112 Ind. 15; s. c. 13 N. E. 115; Chamberlain v. City of Evansville, 77 Ind. 542; City of Brooklyn v. Breslin, 57 N. Y. 591; State v. Treasurer &c., 44 N. J. L. 350; State v. Clarke, 54 Mo. 17; City of Peoria v. Calhoun, 29 Ill. 317; City of St. Paul v. Colter, 12 Minn. 41; Haynes v. City of Cape May, 50 N. J. L. 55; s. c. 13 Atl. 231; District of Columbia v. Waggaman, 4 Mackey 328. A reasonable penalty being prescribed

brated and extreme case in Missouri. The charter of the city of St. Louis authorized the city to regulate bawdy-houses. The court construed this provision to allow the passage of an ordinance licensing bawdy-houses, and in discussing the reasonableness of such an ordinance it was said: "It is naked assumption to say that any matter allowed by the legislature is against public policy. The best indications of public policy are to be found in the enactments of the legislature. To say that such a law is of unusual tendency is disrespectful to the legislature, who, no doubt, designed to promote the morals and health of the citizens. Whether the ordinance in question is calculated to promote the object is a question with which the courts have no concern."[188] But the fact that an ordinance is passed under power conferred by statute does not preclude the question of reasonableness, where it leaves the details to be fixed by the ordinance, for the reason that the exercise of a power may be unreasonable. The reasonableness of the power granted is one thing, and the reasonableness of the exercise of that power quite another thing.[189] The rule that an ordinance specifically authorized by a statute can not be impeached for unreasonableness does not apply to an ordinance for the construction of a sewer, passed under a general power over the subject. Where a grant of power is general in its nature and its exercise may either be reasonable, or arbitrarily unreasonable and oppressive, the grant is subject to the implied limitation that its exercise shall be reasonable, and courts have power to pass upon and determine that question.[190]

in an ordinance, it is not unconstitutional because the statute under which it is enacted does not limit the penalty the ordinance may impose: State v. Carpenter, 60 Conn. 97; s. c. 22 Atl. 497. It is a part of the common law that an ordinance not expressly authorized must be reasonable: Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; Milliken v. City Council &c., 54 Tex. 388; Napman v. People, 19 Mich. 352; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37; City of Grand Rapids v. Newton, 111 Mich. 48; s. c. 69 N. W. 84; 35 L. R. A. 226; Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138; Town of Darlington v. Ward, 48 S. C. 570; s. c. 26 S. E. 906; Skaggs v. City of Martinsville, 140 Ind. 476; s. c. 39 N. E. 241; Kansas City v. Trieb, 76 Mo. App. 478.

[188] State v. Clarke, 54 Mo. 17, 36. See Dillon Munic. Corp., § 328.

[189] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; City of St. Paul v. Colter, 12 Minn. 41; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; State v. Treasurer &c., 44 N. J. L. 350.

[190] Title &c. Co. v. City of Chicago, 162 Ill. 505; s. c. 44 N. E. 832; Village of Hyde Park v. Carton, 132 Ill. 100; s. c. 23 N. E. 590; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

lack, J., in an able opinion delivered in an Indiana case: "An ordinance can not be held to be unreasonable which is expressly authorized by the legislature. The power of a court to declare an ordinance unreasonable and therefore void is practically restricted to cases in which the legislature has enacted nothing on the subject-matter of the ordinance, and consequently to cases in which the ordinance was passed under the supposed incidental power of the corporation merely."[186] So when the legislature expressly authorizes the municipality to pass any certain ordinance, that ordinance will be upheld, regardless of the opinion of the court as to its reasonableness or unreasonableness.[187] This principle was fully discussed in a cele-

Mayor &c., 47 N. J. L. 286; State v. East Orange, 41 N. J. L. 127; Kip v. Mayor &c., 26 N. J. L. 298; Dayton v. Quigley, 29 N. J. Eq. 77; City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359; Tugman v. City of Chicago, 78 Ill. 405; City of Clinton v. Phillips, 58 Ill. 102; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Commissioners &c. v. Northern Liberties Gas Co., 12 Pa. St. 318; O'Maley v. Borough of Freeport, 96 Pa. St. 24; Kneedler v. Borough of Norristown, 100 Pa. St. 368; Commonwealth v. Robertson, 5 Cush. (Mass.) 438; City of Boston v. Shaw, 1 Met. (Mass.) 130; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Steffee, 7 Bush (Ky.) 161; Ex parte Frank, 52 Cal. 606; Ex parte Chin Yan, 60 Cal. 78; State v. Freeman, 38 N. H. 426; Mayor &c. v. Radecke, 49 Md. 217; Kirkham v. Russell, 76 Va. 956; Waters v. Leech, 3 Ark. 110; Davis v. Town of Anita, 73 Iowa 325; s. c. 35 N. W. 244; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Meyers v. Chicago &c. R. Co., 57 Iowa 555; s. c. 10 N. W. 896; Gilham v. Wells, 64 Ga. 192; City of Cape Girardeau v. Riley, 72 Mo. 220. For English cases, see 2 Kyd Corp. 107; Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Master &c. v. Brooking, 3 Q. B. 95; Elwood v. Bullock, 6 Q. B. 383. In the last-cited case an ordinance imposing unreasonable restrictions on the licensing of booths was held invalid. The reasonableness and sufficiency of an ordinance are not to be tested in all cases by its application to extreme cases: Commonwealth v. Plaisted, 148 Mass. 375, 382; s. c. 19 N. E. 224. Perhaps a proper construction might not admit of their being included within it: Commonwealth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146. See also, Walker v. City of Aurora, 140 Ill. 402; s. c. 29 N. E. 741.

[186] Coal Float v. City of Jeffersonville, 112 Ind. 15, 19; s. c. 13 N. E. 115.

[187] Coal Float v. City of Jeffersonville, 112 Ind. 15; s. c. 13 N. E. 115; Chamberlain v. City of Evansville, 77 Ind. 542; City of Brooklyn v. Breslin, 57 N. Y. 591; State v. Treasurer &c., 44 N. J. L. 350; State v. Clarke, 54 Mo. 17; City of Peoria v. Calhoun, 29 Ill. 317; City of St. Paul v. Colter, 12 Minn. 41; Haynes v. City of Cape May, 50 N. J. L. 55; s. c. 13 Atl. 231; District of Columbia v. Waggaman, 4 Mackey 328. A reasonable penalty being prescribed

brated and extreme case in Missouri. The charter of the city of St. Louis authorized the city to regulate bawdy-houses. The court construed this provision to allow the passage of an ordinance licensing bawdy-houses, and in discussing the reasonableness of such an ordinance it was said: "It is naked assumption to say that any matter allowed by the legislature is against public policy. The best indications of public policy are to be found in the enactments of the legislature. To say that such a law is of unusual tendency is disrespectful to the legislature, who, no doubt, designed to promote the morals and health of the citizens. Whether the ordinance in question is calculated to promote the object is a question with which the courts have no concern."[188] But the fact that an ordinance is passed under power conferred by statute does not preclude the question of reasonableness, where it leaves the details to be fixed by the ordinance, for the reason that the exercise of a power may be unreasonable. The reasonableness of the power granted is one thing, and the reasonableness of the exercise of that power quite another thing.[189] The rule that an ordinance specifically authorized by a statute can not be impeached for unreasonableness does not apply to an ordinance for the construction of a sewer, passed under a general power over the subject. Where a grant of power is general in its nature and its exercise may either be reasonable, or arbitrarily unreasonable and oppressive, the grant is subject to the implied limitation that its exercise shall be reasonable, and courts have power to pass upon and determine that question.[190]

in an ordinance, it is not unconstitutional because the statute under which it is enacted does not limit the penalty the ordinance may impose: State v. Carpenter, 60 Conn. 97; s. c. 22 Atl. 497. It is a part of the common law that an ordinance not expressly authorized must be reasonable: Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; Milliken v. City Council &c., 54 Tex. 388; Napman v. People, 19 Mich. 352; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37; City of Grand Rapids v. Newton, 111 Mich. 48; s. c. 69 N. W. 84; 35 L. R. A. 226; Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138; Town of Darlington v. Ward, 48 S. C. 570; s. c. 26 S. E. 906; Skaggs v. City of Martinsville, 140 Ind. 476; s. c. 39 N. E. 241; Kansas City v. Trieb, 76 Mo. App. 478.

[188] State v. Clarke, 54 Mo. 17, 36. See Dillon Munic. Corp., § 328.

[189] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; City of St. Paul v. Colter, 12 Minn. 41; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; State v. Treasurer &c., 44 N. J. L. 350.

[190] Title &c. Co. v. City of Chicago, 162 Ill. 505; s. c. 44 N. E. 832; Village of Hyde Park v. Carton, 132 Ill. 100; s. c. 23 N. E. 590; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

lack, J., in an able opinion delivered in an Indiana case: "An ordinance can not be held to be unreasonable which is expressly authorized by the legislature. The power of a court to declare an ordinance unreasonable and therefore void is practically restricted to cases in which the legislature has enacted nothing on the subject-matter of the ordinance, and consequently to cases in which the ordinance was passed under the supposed incidental power of the corporation merely."[186] So when the legislature expressly authorizes the municipality to pass any certain ordinance, that ordinance will be upheld, regardless of the opinion of the court as to its reasonableness or unreasonableness.[187] This principle was fully discussed in a cele-

Mayor &c., 47 N. J. L. 286; State v. East Orange, 41 N. J. L. 127; Kip v. Mayor &c., 26 N. J. L. 298; Dayton v. Quigley, 29 N. J. Eq. 77; City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359; Tugman v. City of Chicago, 78 Ill. 405; City of Clinton v. Phillips, 58 Ill. 102; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Commissioners &c. v. Northern Liberties Gas Co., 12 Pa. St. 318; O'Maley v. Borough of Freeport, 96 Pa. St. 24; Kneedler v. Borough of Norristown, 100 Pa. St. 368; Commonwealth v. Robertson, 5 Cush. (Mass.) 438; City of Boston v. Shaw, 1 Met. (Mass.) 130; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Steffee, 7 Bush (Ky.) 161; Ex parte Frank, 52 Cal. 606; Ex parte Chin Yan, 60 Cal. 78; State v. Freeman, 38 N. H. 426; Mayor &c. v. Radecke, 49 Md. 217; Kirkham v. Russell, 76 Va. 956; Waters v. Leech, 3 Ark. 110; Davis v. Town of Anita, 73 Iowa 325; s. c. 35 N. W. 244; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Meyers v. Chicago &c. R. Co., 57 Iowa 555; s. c. 10 N. W. 896; Gilham v. Wells, 64 Ga. 192; City of Cape Girardeau v. Riley, 72 Mo. 220. For English cases, see 2 Kyd Corp. 107; Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Master &c. v. Brooking, 3 Q. B. 95; Elwood v. Bullock, 6 Q. B. 383. In the last-cited case an ordinance imposing unreasonable restrictions on the licensing of booths was held invalid. The reasonableness and sufficiency of an ordinance are not to be tested in all cases by its application to extreme cases: Commonwealth v. Plaisted, 148 Mass. 375, 382; s. c. 19 N. E. 224. Perhaps a proper construction might not admit of their being included within it: Commonweolth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146. See also, Walker v. City of Aurora, 140 Ill. 402; s. c. 29 N. E. 741.

[186] Coal Float v. City of Jeffersonville, 112 Ind. 15, 19; s. c. 13 N. E. 115.

[187] Coal Float v. City of Jeffersonville, 112 Ind. 15; s. c. 13 N. E. 115; Chamberlain v. City of Evansville, 77 Ind. 542; City of Brooklyn v. Breslin, 57 N. Y. 591; State v. Treasurer &c., 44 N. J. L. 350; State v. Clarke, 54 Mo. 17; City of Peoria v. Calhoun, 29 Ill. 317; City of St. Paul v. Colter, 12 Minn. 41; Haynes v. City of Cape May, 50 N. J. L. 55; s. c. 13 Atl. 231; District of Columbia v. Waggaman, 4 Mackey 328. A reasonable penalty being prescribed

brated and extreme case in Missouri. The charter of the city of St. Louis authorized the city to regulate bawdy-houses. The court construed this provision to allow the passage of an ordinance licensing bawdy-houses, and in discussing the reasonableness of such an ordinance it was said: "It is naked assumption to say that any matter allowed by the legislature is against public policy. The best indications of public policy are to be found in the enactments of the legislature. To say that such a law is of unusual tendency is disrespectful to the legislature, who, no doubt, designed to promote the morals and health of the citizens. Whether the ordinance in question is calculated to promote the object is a question with which the courts have no concern."[188] But the fact that an ordinance is passed under power conferred by statute does not preclude the question of reasonableness, where it leaves the details to be fixed by the ordinance, for the reason that the exercise of a power may be unreasonable. The reasonableness of the power granted is one thing, and the reasonableness of the exercise of that power quite another thing.[189] The rule that an ordinance specifically authorized by a statute can not be impeached for unreasonableness does not apply to an ordinance for the construction of a sewer, passed under a general power over the subject. Where a grant of power is general in its nature and its exercise may either be reasonable, or arbitrarily unreasonable and oppressive, the grant is subject to the implied limitation that its exercise shall be reasonable, and courts have power to pass upon and determine that question.[190]

in an ordinance, it is not unconstitutional because the statute under which it is enacted does not limit the penalty the ordinance may impose: State v. Carpenter, 60 Conn. 97; s. c. 22 Atl. 497. It is a part of the common law that an ordinance not expressly authorized must be reasonable: Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; Milliken v. City Council &c., 54 Tex. 388; Napman v. People, 19 Mich. 352; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37; City of Grand Rapids v. Newton, 111 Mich. 48; s. c. 69 N. W. 84; 35 L. R. A. 226; Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138; Town of Darlington v. Ward, 48 S. C. 570; s. c. 26 S. E. 906; Skaggs v. City of Martinsville, 140 Ind. 476; s. c. 39 N. E. 241; Kansas City v. Trieb, 76 Mo. App. 478.

[188] State v. Clarke, 54 Mo. 17, 36. See Dillon Munic. Corp., § 328.

[189] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; City of St. Paul v. Colter, 12 Minn. 41; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; State v. Treasurer &c., 44 N. J. L. 350.

[190] Title &c. Co. v. City of Chicago, 162 Ill. 505; s. c. 44 N. E. 832; Village of Hyde Park v. Carton, 132 Ill. 100; s. c. 23 N. E. 590; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

lack, J., in an able opinion delivered in an Indiana case: "An ordinance can not be held to be unreasonable which is expressly authorized by the legislature. The power of a court to declare an ordinance unreasonable and therefore void is practically restricted to cases in which the legislature has enacted nothing on the subject-matter of the ordinance, and consequently to cases in which the ordinance was passed under the supposed incidental power of the corporation merely."[186] So when the legislature expressly authorizes the municipality to pass any certain ordinance, that ordinance will be upheld, regardless of the opinion of the court as to its reasonableness or unreasonableness.[187] This principle was fully discussed in a cele-

Mayor &c., 47 N. J. L. 286; State v. East Orange, 41 N. J. L. 127; Kip v. Mayor &c., 26 N. J. L. 298; Dayton v. Quigley, 29 N. J. Eq. 77; City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359; Tugman v. City of Chicago, 78 Ill. 405; City of Clinton v. Phillips, 58 Ill. 102; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Commissioners &c. v. Northern Liberties Gas Co., 12 Pa. St. 318; O'Maley v. Borough of Freeport, 96 Pa. St. 24; Kneedler v. Borough of Norristown, 100 Pa. St. 368; Commonwealth v. Robertson, 5 Cush. (Mass.) 438; City of Boston v. Shaw, 1 Met. (Mass.) 130; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Steffee, 7 Bush (Ky.) 161; Ex parte Frank, 52 Cal. 606; Ex parte Chin Yan, 60 Cal. 78; State v. Freeman, 38 N. H. 426; Mayor &c. v. Radecke, 49 Md. 217; Kirkham v. Russell, 76 Va. 956; Waters v. Leech, 3 Ark. 110; Davis v. Town of Anita, 73 Iowa 325; s. c. 35 N. W. 244; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Meyers v. Chicago &c. R. Co., 57 Iowa 555; s. c. 10 N. W. 896; Gilham v. Wells, 64 Ga. 192; City of Cape Girardeau v. Riley, 72 Mo. 220. For English cases, see 2 Kyd Corp. 107; Davies v. Morgan, 1 Cromp. & J. 587; Chamberlain of London v. Compton, 7 D. & R. 597; Clark v. Le Cren, 9 B. & C. 52; Gosling v. Veley, 12 Q. B. 328; Master &c. v. Brooking, 3 Q. B. 95; Elwood v. Bullock, 6 Q. B. 383. In the last-cited case an ordinance imposing unreasonable restrictions on the licensing of booths was held invalid. The reasonableness and sufficiency of an ordinance are not to be tested in all cases by its application to extreme cases: Commonwealth v. Plaisted, 148 Mass. 375, 382; s. c. 19 N. E. 224. Perhaps a proper construction might not admit of their being included within it: Commonweolth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146. See also, Walker v. City of Aurora, 140 Ill. 402; s. c. 29 N. E. 741.

[186] Coal Float v. City of Jeffersonville, 112 Ind. 15, 19; s. c. 13 N. E. 115.

[187] Coal Float v. City of Jeffersonville, 112 Ind. 15; s. c. 13 N. E. 115; Chamberlain v. City of Evansville, 77 Ind. 542; City of Brooklyn v. Breslin, 57 N. Y. 591; State v. Treasurer &c., 44 N. J. L. 350; State v. Clarke, 54 Mo. 17; City of Peoria v. Calhoun, 29 Ill. 317; City of St. Paul v. Colter, 12 Minn. 41; Haynes v. City of Cape May, 50 N. J. L. 55; s. c. 13 Atl. 231; District of Columbia v. Waggaman, 4 Mackey 328. A reasonable penalty being prescribed

brated and extreme case in Missouri. The charter of the city of St. Louis authorized the city to regulate bawdy-houses. The court construed this provision to allow the passage of an ordinance licensing bawdy-houses, and in discussing the reasonableness of such an ordinance it was said: "It is naked assumption to say that any matter allowed by the legislature is against public policy. The best indications of public policy are to be found in the enactments of the legislature. To say that such a law is of unusual tendency is disrespectful to the legislature, who, no doubt, designed to promote the morals and health of the citizens. Whether the ordinance in question is calculated to promote the object is a question with which the courts have no concern."[188] But the fact that an ordinance is passed under power conferred by statute does not preclude the question of reasonableness, where it leaves the details to be fixed by the ordinance, for the reason that the exercise of a power may be unreasonable. The reasonableness of the power granted is one thing, and the reasonableness of the exercise of that power quite another thing.[189] The rule that an ordinance specifically authorized by a statute can not be impeached for unreasonableness does not apply to an ordinance for the construction of a sewer, passed under a general power over the subject. Where a grant of power is general in its nature and its exercise may either be reasonable, or arbitrarily unreasonable and oppressive, the grant is subject to the implied limitation that its exercise shall be reasonable, and courts have power to pass upon and determine that question.[190]

in an ordinance, it is not unconstitutional because the statute under which it is enacted does not limit the penalty the ordinance may impose: State v. Carpenter, 60 Conn. 97; s. c. 22 Atl. 497. It is a part of the common law that an ordinance not expressly authorized must be reasonable: Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; Milliken v. City Council &c., 54 Tex. 388; Napman v. People, 19 Mich. 352; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Toledo &c. R. Co. v. City of Jacksonville, 67 Ill. 37; City of Grand Rapids v. Newton, 111 Mich. 48; s. c. 69 N. W. 84; 35 L. R. A. 226; Shea v. City of Muncie, 148 Ind. 14; s. c. 46 N. E. 138; Town of Darlington v. Ward, 48 S. C. 570; s. c. 26 S. E. 906; Skaggs v. City of Martinsville, 140 Ind. 476; s. c. 39 N. E. 241; Kansas City v. Trieb, 76 Mo. App. 478.

[188] State v. Clarke, 54 Mo. 17, 36. See Dillon Munic. Corp., § 328.

[189] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373; Wice v. Chicago &c. R. Co., 193 Ill. 351; s. c. 61 N. E. 1084; City of St. Paul v. Colter, 12 Minn. 41; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; State v. Treasurer &c., 44 N. J. L. 350.

[190] Title &c. Co. v. City of Chicago, 162 Ill. 505; s. c. 44 N. E. 832; Village of Hyde Park v. Carton, 132 Ill. 100; s. c. 23 N. E. 590; Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

§ 526. **(h) The same subject continued—Illustrations.**—The presumption is always in favor of the reasonableness of the ordinance, and unless it is unreasonable on its face or is proved to be so by proper evidence, the ordinance will be upheld.[192] Of course each case in which the reasonableness of an ordinance is questioned must be decided on the facts of that particular case. No general rule can be laid down defining what ordinances are unreasonable and what ordinances are not. But certain broad principles can be followed. Thus an ordinance must not be so vague that its precise meaning can not be ascertained. This question is discussed in the succeeding section. Also the ordinance must not be oppressive.[193] It must not be in restraint of trade.[194] It must not be contrary to common right. Thus an ordinance of a Texas city forbidding the renting of private property to lewd women, or to any person for their use, was held to be a proscriptive denial of shelter to that class, and null and void as in contravention of common right.[195] It must

[192] Van Hook v. City of Selma, 70 Ala. 361; State v. Inhabitants &c., 53 N. J. L. 132; s. c. 20 Atl. 1076; Commonwealth v. Patch, 97 Mass. 221. Cf. City of St. Louis v. Weber, 44 Mo. 547; City of St. Louis v. Knox, 6 Mo. App. 247; Clason v. City of Milwaukee, 30 Wis. 316; Moore v. District of Columbia, 12 App. D. C. 537. An ordinance regularly passed and signed will not be held unreasonable except from its inherent character, or from evidence of its operation: State v. City of Elizabeth, 58 N. J. L. 619; s. c. 34 Atl. 146.

[193] Mayor &c. v. Radecke, 49 Md. 217; Mayor &c. v. Winfield, 8 Humph. (Tenn.) 707; City of St. Louis v. Weber, 44 Mo. 547; Commissioners v. Northern Liberties Gas Co., 12 Pa. St. 318. An ordinance under implied power may be declared by the court as unreasonable and oppressive: Skinker v. Heman, 2 Mo. App. Repr. 1095; Pittsburgh &c. R. Co. v. Town of Crown Point, 146 Ind. 421; s. c. 45 N. E. 587; 35 L. R. A. 684; City of Lamar v. Weidman, 57 Mo. App. 507.

[194] Tugman v. City of Chicago, 78 Ill. 405; Ex parte Frank, 52 Cal. 606; Caldwell v. City of Alton, 33 Ill. 417; Borough of Sayre v. Phillips, 148 Pa. St. 482; s. c. 24 Atl. 76. A license fee of $10 per day, making no discrimination on account of the extent of business, or length of time to be carried on, is unnecessarily burdensome, in restraint of trade and prohibitory: City of Carrollton v. Bazzette, 159 Ill. 284; s. c. 42 N. E. 837. And so an ordinance fixing license of itinerant merchants at $200 per month is unreasonable and exorbitant: City of Peoria v. Gugenheim, 61 Ill. App. 374. A license to transients of $250 per month, or $25 per day, is unreasonable and void: City of Ottumwa v. Zekind, 95 Iowa 622; s. c. 64 N. W. 646. And so is a license of $10 per day on itinerant merchants: City of Carrollton v. Bazzette, 159 Ill. 284; s. c. 42 N. E. 837.

[195] Milliken v. City Council &c., 54 Tex. 388. See also, State v. Mott, 61 Md. 297, and cases cited post. An ordinance prohibiting any person, firm or corporation from keeping open, within the limits of a city, certain enumerated stores, to expose, or offer for sale, or give away merchandise therein on Sunday, is void as to dealers in clothing: City of

be impartial and general in its operation.[196] So far as it restricts the absolute dominion of an owner over his property it should furnish a uniform rule of action, and its application can not be left to the arbitrary will of the governing authorities.[197] Thus, an ordinance which

Denver v. Bach, 26 Colo. 530; s. c. 58 Pac. 1089. An ordinance prohibiting cars to be run without vestibules during winter months is invalid: City of Yonkers v. Yonkers R. Co., 64 N. Y. S. 955; s. c. 57 App. Div. (N. Y.) 271. An ordinance prohibiting laundries, except in brick and stone buildings, is unreasonable in that it does not apply to other kinds of business using machinery: City of Shreveport v. Robinson, 51 La. An. 1314; s. c. 26 So. 664. An ordinance regulating the weight of bakers' bread is void: City of Buffalo v. Collins Baking Co., 57 N. Y. S. 347; s. c. 39 App. Div. (N. Y.) 432. And so is an ordinance prohibiting the sale of loaves of bread weighing less than one and a half pounds and providing a penalty: City of Buffalo v. Collins Baking Co., supra. An ordinance making it unlawful to cover any package or parcel of fruit, etc., with any colored netting or other material having a tendency to conceal the true color or quality of such goods sold or offered for sale has been held to be unreasonable and void: Frost v. City of Chicago, 178 Ill. 250; s. c. 52 N. E. 869.

[196] First Municipality v. Blineau, 3 La. An. 688. An ordinance making it a misdemeanor to drive faster than an ordinary gait in the city streets is unreasonable if applied to a fire-department in driving to a fire: City of Kansas City v. McDonald, 60 Kan. 481; s. c. 57 Pac. 123. An ordinance relating to the license of milk-dealers must be uniform; and if it undertakes to exempt certain persons of a class,—as, a milk-dealer having less than two cows,—who sell to their neighbors by hand, it is void: Pierce v. City of Aurora, 81 Ill. App. 670. An ordinance prohibiting persons temporarily residing in a city from selling goods at auction without license is void where residents are not required to pay license: City of Carrollton v. Bazzette, 159 Ill. 284; s. c. 42 N. E. 837. It has been held that requiring transient merchants to pay a license does not discriminate in favor of residents: City of Ottumwa v. Zekind, 95 Iowa 622; s. c. 64 N. W. 646. An ordinance prohibiting the purchase of lots for burial purposes within the corporate limits, but permitting further burials on lots already owned, is discriminative and therefore unreasonable: Ex parte Bohen, 115 Cal. 372; s. c. 47 Pac. 55; 36 L. R. A. 618.

[197] State v. Tenant, 110 N. C. 609; s. c. 14 S. E. 387; citing Newton v. Belger, 143 Mass. 598; s. c. 10 N. E. 464; City of Richmond v. Dudley, 129 Ind. 112; s. c. 28 N. E. 312; Yick Wo v. Hopkins, 118 U. S. 356; s. c. 6 S. Ct. 1064; May v. People, 1 Colo. 157; s. c. 27 Pac. 1010; Mayor &c. v. Radecke, 49 Md. 217; Anderson v. City of Wellington, 40 Kan. 173; s. c. 19 Pac. 719; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Tugman v. City of Chicago, 78 Ill. 405; Village of Braceville v. Doherty, 30 Ill. App. 645; Barthet v. City of New Orleans, 24 Fed. 563; Bills v. City of Goshen, 117 Ind. 221; s. c. 20 N. E. 115; Town of Lake View v. Letz, 44 Ill. 81; City of Evansville v. Martin, 41 Ind. 145; Horr & Bemis Munic. Police Ord., § 13. See also, State v. Webber, 107 N. C. 962; s. c. 12 S. E. 598; State v. Hunter, 106 N. C. 796; s. c. 11 S. E. 366. A license fee of not less than $1 and not exceeding $100 for those engaged in transient business as au-

provides that no person shall erect, add to, or generally change any building without first obtaining the permission of the board of aldermen, is void for the reason indicated.[198] An ordinance prohibiting any carriage, hack or vehicle, used to carry passengers or freight for hire, from stopping or standing on specified streets in front of any public hotel, except when actually engaged in receiving or delivering passengers or freight, and making it a misdemeanor, is unreasonable and oppressive.[199] An ordinance requiring a street-car company to sprinkle its track, and providing a penalty of twenty-five dollars for each breach, and twenty-five dollars per day for its continued violation, with a further provision that if the penalty is not paid officers shall have power to stop the running of cars, is unreasonable and void.[200] An ordinance imposing a fee of one-half cent per gallon for inspecting kerosene oil where no restrictions are imposed upon the inspector and no rules prescribed regulating his conduct, or the frequency of inspection, is void as oppressive on trade and commerce, it appearing that the fee is eight and one-third per cent. of the value of the oil inspected.[201] An ordinance compelling the construction of a cement sidewalk in lieu of a substantial plank walk, comparatively new, is unreasonable and void.[202] And so is an ordinance prohibiting the importation of second-hand clothing and furniture for the purpose of sale.[203] Where a license fee sufficient to pay the reasonable cost of issuing is authorized it can not be made for the purpose of revenue.[204] An ordinance is not invalid as oppressive and unreasonable where the improvement is in the discretion of the city and it is presumed defects in the improvement will be remedied.[205] An ordinance imposing an inspection tax of fifty cents for each pole of an electric company when the actual cost of inspection does not exceed five cents is unreasonable.[206] The following ordinances have been held to be reasonable: An ordinance compelling a passenger to use his transfer within a time-limit and prohibiting him from transferring or selling

thorities may direct is void: State v. Conlon, 65 Conn. 478; s. c. 33 Atl. 519.

[198] State v. Tenant, 110 N. C. 609; s. c. 14 S. E. 387.

[199] Ex parte Battis, 40 Tex. Cr. App. 112; s. c. 48 S. W. 513.

[200] Appeal of Chester Traction Co., 6 Del. Co. Ct. (Pa.) 397, 587; s. c. 40 W. N. C. (Pa.) 183.

[201] Ford v. Standard Oil Co., 53 N. Y. S. 48; s. c. 32 App. Div. (N. Y.) 596.

[202] Hawes v. City of Chicago, 158 Ill. 653; s. c. 42 N. E. 373.

[203] State v. Taft, 118 N. C. 1190; s. c. 23 S. E. 970.

[204] State v. Glavin, 67 Conn. 29; s. c. 34 Atl. 708.

[205] Chicago &c. R. Co. v. City of Chicago, 184 Ill. 154; s. c. 56 N. E. 410.

[206] City of Saginaw v. Swift Electric L. Co., 113 Mich. 660; s. c. 72 N. W. 6.

it, or giving it away;[207] an ordinance prohibiting the sale of lemonade, etc., by the device of throwing at a dummy without a license;[208] an ordinance requiring a railroad company to light its track with electricity within twenty days after notice of the passage of the ordinance;[209] an ordinance establishing a hack-stand;[210] an ordinance requiring bicycle riders to ring a bell upon approach towards cross walks;[211] an ordinance making it unlawful to make a noise on the streets and sidewalks by the use of drums or musical instruments, or otherwise, of such character, extent and duration as to annoy and disturb others;[212] an ordinance limiting the speed of trains to five miles an hour and requiring a bell to be rung while in the city limits;[213] an ordinance requiring a street-car company to sprinkle its tracks on a street in which its track is laid—not only reasonable, but a proper exercise of police power;[214] an ordinance prohibiting a person going on the premises of a railroad company to solicit patronage for a hotel;[215] a license of peddlers exempting mechanics of the state selling their own products and farmers selling their produce;[216] or requiring irregular dealers, having no regular place of business, to pay a license in excess of that paid by regular merchants;[217] restraining certain occupations,—such as shoddy- and carpet-cleaning in certain locations;[218] or keeping a livery-stable in a certain locality.[219]

§ 527. (i) **The same subject continued—Reasonableness a question of law.**—It is, of course, a question of law and not of fact, for the court and not for the jury, whether any specific ordinance is so unreasonable as to be void.[220] This is the well-established doctrine of the cases in

[207] Ex parte Lorenzen, 128 Cal. 431; s. c. 61 Pac. 68.

[208] Jones v. Foster, 59 N. Y. S. 738; s. c. 43 App. Div. (N. Y.) 33.

[209] Village of St. Marys v. Lake Erie &c. R. Co., 60 Ohio St. 136; s. c. 53 N. E. 795.

[210] City Council &c. v. Parker, 114 Ala. 118; s. c. 21 So. 452.

[211] City of Emporia v. Wagoner, 6 Kan. App. 659; s. c. 49 Pac. 701.

[212] In re Gribben, 5 Okla. 379; s. c. 47 Pac. 1074.

[213] Washington &c. R. Co. v. Lacey, 94 Va. 460; s. c. 26 S. E. 834.

[214] State v. Canal &c. R. Co., 50 La. An. 1189; s. c. 24 So. 265.

[215] City of Laddonia v. Poor, 73 Mo. App. 465.

[216] People v. Sawyer, 106 Mich. 428, s. c. 64 N. W. 333.

[217] Ex parte Haskell, 112 Cal. 412; s. c. 44 Pac. 725.

[218] Ex parte Lacey, 108 Cal. 326; s. c. 41 Pac. 411.

[219] City of Chicago v. Stratton, 58 Ill. App. 539.

[220] City of Brooklyn v. Breslin, 57 N. Y. 591; Mayor &c. v. Thorne, 7 Paige Ch. (N. Y.) 261; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; Village of Buffalo v. Webster, 10 Wend. (N. Y.) 100; Austin v. Murray, 16 Pick. (Mass.) 121; City of Boston v. Shaw, 1 Met. (Mass.) 130; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; In re Vandine, 6 Pick. (Mass.) 187; Commonwealth v. Stod-

England as well as in America, but the contrary view has been asserted in a Wisconsin case where the validity of an ordinance intended to protect the city from inundation was called into question. The court held that testimony relating to the reasonableness of the ordinance could properly be presented to the jury.[221] This decision is anomalous, however, and is probably entitled to but little weight. While the question of the reasonableness of an ordinance is a question of law for the court, yet the facts which may or may not make an ordinance reasonable, if controverted, must be determined by the jury.[222] The motives of members of the council in the passage of an ordinance, in the absence of fraud will not be inquired into if the ordinance is lawful on its face, passed in due form, and is within the scope of the powers vested in the council; nor are the motives of the beneficiaries important.[223]

§ **528. (j) Vagueness of the ordinance.**—It is manifest that an ordinance must be certain and definite in order to be reasonable. Accordingly the courts have often held ordinances void as being vague and indefinite.[224] An ordinance providing that for certain offenses the

der, 2 Cush. (Mass.) 562; Commissioners v. Northern Liberties Gas Co., 12 Pa. St. 318; Kneedler v. Borough of Norristown, 100 Pa. St. 368; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Ex parte Frank, 52 Cal. 606; State v. East Orange, 41 N. J. L. 127; State v. Mayor &c., 37 N. J. L. 348; Paxson v. Sweet, 13 N. J. L. 196.

[221] Clason v. City of Milwaukee, 30 Wis. 316.

[222] City of Austin v. Austin City Cemetery Ass'n (Tex. Civ. App.), 28 S. W. 1023.

[223] Wood v. City of Seattle, 23 Wash. 1; s. c. 62 Pac. 135; Dreyfus v. Lonergan, 73 Mo. App. 336; Moore v. Commissioners &c., 62 N. J. L. 386, 792; s. c. 41 Atl. 946; Kittinger v. Buffalo &c. Co., 160 N. Y. 377; s. c. 54 N. E. 1081. It would seem to be a pertinent inquiry whether the doctrine laid down in the text should be applied where the action of the council is contractual in its nature, rather than purely legislative. And even where the action is of a mixed nature, as in the granting of franchises, the strict application of the rule is, to say the least, of doubtful propriety.

[224] Tappan v. Young, 9 Daly (N. Y.) 357; San Francisco &c. Factory v. Brickwedel, 60 Cal. 166; Becker v. City of Washington, 94 Mo. 375, 380; s. c. 7 S. W. 291; Commonwealth v. Roy, 140 Mass. 432; s. c. 4 N. E. 814; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Bills v. City of Goshen, 117 Ind. 221; s. c. 20 N. E. 115; City of Helena v. Gray, 7 Mont. 486; s. c. 17 Pac. 564. A penal ordinance which fails to cast on any particular person or persons the duty of making repairs on leaky vaults is too vague and uncertain: State v. Forman, 50 La. An. 1022; s. c. 24 So. 603. An ordinance imposing a fine of not more than $50 for a violation is void for uncertainty: State v. Irvin, 126 N. C. 989; s. c. 35 S. E. 430. An ordinance may be void for uncertainty, as where it prescribes that an awning may be upon a suitable frame: State v. Clarke, 69 Conn. 371; s. c. 37 Atl. 975.

offender should pay not more than fifty dollars or suffer imprisonment not to exceed one month was held in North Carolina to be void for vagueness and uncertainty.[225] And in the same state an ordinance providing that for certain disorderly conduct the offender might be fined by the mayor not more than five dollars was also considered void for uncertainty.[226] But in an Alabama case an ordinance which imposed a penalty not exceeding a fixed sum was upheld as sufficiently certain.[227] In accordance with these principles the weight of authority is that the amount of the fine imposed by the ordinance must be fixed thereby and can not be left to the discretion of an officer.[228] An ordinance providing that no occupant of land abutting on a private way shall suffer any filth to remain on that part of the way adjoining his land is not open to the objection of indefiniteness because it does not fix a time beyond which it shall not be allowed to remain. The words "suffer to remain" imply an opportunity to remove and a failure to do so.[229]

§ 529. **(k) Ordinances void for want of notice.**—As we have already seen all ordinances are not strictly legislative in their nature, and frequently they affect the individual and property rights of persons, in which case it is essential that the persons whose rights are affected by the ordinance shall have notice. Thus, an ordinance which practically adjudicates property-rights is invalid unless all persons who are interested in the subject-matter have notice, actual or constructive.[230] An ordinance establishing a building-line which encroaches on private property, passed without notice, can not be enforced.[231] The charter, or general statute, frequently requires that ordinances of certain character, such as granting permission to a

[225] State v. Crenshaw, 94 N. C. 877.

[226] State v. Cainan, 94 N. C. 883. And a town ordinance which provided that "any person whose duty it shall be to make such alterations, and who shall refuse to do so after due notice thereof, shall be fined a sum not exceeding five dollars, and one dollar for each and every day he may neglect to make such repairs," was thought to leave the fine and penalty uncertain in amount and to be void: State v. Rice, 97 N. C. 421; s. c. 2 S. E. 180.

[227] Mayor &c. v. Phelps, 27 Ala. 55. So also, under the English statute authorizing an ordinance imposing a fine of not more than five pounds, an ordinance fixing a fine "not exceeding 51." was sustained: Piper v. Chappell, 14 M. & W. 624.

[228] State v. Zeigler, 32 N. J. L. 262, 269; Commissioners v. Harris, 7 Jones L. (N. C.) 281; State v. Crenshaw, 94 N. C. 877; State v. Cainan, 94 N. C. 883; State v. Treasurer &c., 53 N. J. L. 329; s. c. 21 Atl. 304.

[229] Commonwealth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146.

[230] City of Cape May v. Cape May &c. R. Co., 60 N. J. L. 224; s. c. 37 Atl. 892.

[231] Byrnes v. Mayor &c., 64 N. J. L. 210; s. c. 44 Atl. 857.

railway to occupy the streets, and other franchises of a similar nature, shall be based on the consent of a specified number of the property-owners on the line of street affected, or that before an ordinance of a certain nature shall be passed notice thereof shall be given in advance, or that a certain period shall elapse after the introduction of an ordinance and its publication before it shall be put upon its final passage. An ordinance declaring that a street-railway might locate its line on certain streets without petition or publication of notice thereof is a nullity.[232] In the very nature of things it would be manifestly unjust, outside of constitutional guaranties, that individual rights of persons should be injuriously affected without an opportunity to be heard.

§ 530. (1) **Ordinances granting arbitrary power.**—Ordinances which invest a city council, or a board of trustees, or officers, with a discretion which is purely arbitrary, and which may be exercised in the interest of a favored few, are unreasonable and invalid.[233] But it is only where the municipal authorities are invested with a power that is purely arbitrary, and which they may exercise or not, as their will may dictate, and the beneficiary appears to be entitled to personal favors, that the rule applies. Ordinances, however, must be general, and officers charged with the duty of enforcing them must be vested with more or less discretion. Many things detrimental to the public peace and enjoyment, in one locality, may not be so in another, and so as to time and environments. Hence an ordinance prohibiting awnings without the consent of certain officers is valid.[234] And so as to orations and harangues in a public park, or common, or other public grounds;[235] or the beating of a drum or tambourine on a street

[232] Harvey v. Aurora &c. R. Co., 186 Ill. 283; s. c. 57 N. E. 857. Notice of the passage of an ordinance for the costs of an improvement, or establishing a district sewer, held not required in Heman v. Allen, 156 Mo. 534; s. c. 57 S. W. 559. As to what is sufficient notice of the introduction of an ordinance granting a franchise, see Wood v. City of Seattle, 23 Wash. 1; s. c. 62 Pac. 135.

[233] Cicero Lumber Co. v. Town of Cicero, 176 Ill. 9; s. c. 51 N. E. 758; City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359; Rich v. City of Naperville, 42 Ill. App. 222; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72; City of Plymouth v. Schultheis, 135 Ind. 701; s. c. 35 N. E. 14; Town of State Center v. Barenstein, 66 Iowa 249; s. c. 23 N. W. 652; Commissioners v. Northern Liberties Gas Co., 12 Pa. St. 318; Austin v. Murray, 16 Pick. (Mass.) 121, 126; State v. Mahner, 43 La. An. 496; s. c. 9 So. 480; State v. Dulaney, 43 La. An. 500; s. c. 9 So. 481; Yick Wo v. Hopkins, 118 U. S. 356; s. c. 6 S. Ct. 1064; City of Newton v. Belger, 143 Mass. 598; s. c. 10 N. E. 464; Mayor &c. v. Radecke, 49 Md. 217.

[234] Pedrick v. Bailey, 12 Gray (Mass.) 161.

[235] Commonwealth v. Abrahams, 156

or sidewalk;[236] or prohibiting the erection and repair of a wooden building, or any building;[237] or forbidding the occupancy of a place on the street;[238] or forbidding the keeping of swine;[239] or forbidding any one remaining in a public market more than twenty minutes;[240] or prohibiting the carrying-on of a laundry;[241] or retailing liquor.[242] An ordinance is not void for uncertainty in that it gives the mayor the discretion to impose a penalty of either fine or imprisonment.[243]

§ 531. (m) **Ordinances delegating power.**—Where the law has placed in the city council the power of legislation, in so far as its local affairs are concerned, or in other words has, by special grant, permitted a part of its sovereign power of legislation to be exercised by the local legislative body, prescribed as to territory and scope, this power so delegated can not be redelegated to some other body, committee, board, bureau, or officer. Besides, it is not possible for an executive or judicial officer to exercise legislative functions. Hence the council can not delegate general power to the mayor to grant a license, or fix the fees;[244] and so an order for an assessment for an improvement "where necessary" is void;[245] and so is an ordinance for an improvement, excepting such portions as have already been done in a suitable manner;[246] or for improving such portions of a sidewalk as the city engineer may direct;[247] or in such manner as the city superintendent shall direct.[248] The power of assessment is referable to the power of taxation, and is itself a legislative power which must not only find express authority for its exercise, but which can be neither exercised by an executive officer, nor delegated to such

Mass. 57; s. c. 30 N. E. 79; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577.

[236] Vance v. Hadfield, 22 N. Y. St. 858.

[237] Ex parte Fiske, 72 Cal. 125; s. c. 13 Pac. 310; Hine v. City of New Haven, 40 Conn. 478; Commissioners &c. v. Covey, 74 Md. 262; s. c. 22 Atl. 266.

[238] Nightingale, Petitioner, 11 Pick. (Mass.) 168.

[239] Inhabitants &c. v. Kennard, 151 Mass. 563; s. c. 24 N. E. 860.

[240] Commonwealth v. Brooks, 109 Mass. 355.

[241] Barbier v. Connolly, 113 U. S. 27; s. c. 5 S. Ct. 357.

[242] Ex parte Christensen, 85 Cal. 208; s. c. 24 Pac. 747. But see State v. Dering, 84 Wis. 585; s. c. 54 N. W. 1104; In re Frazee, 63 Mich. 396; s. c. 30 N. W. 72.

[243] State v. Higgs, 126 N. C. 1014; s. c. 35 S. E. 473.

[244] Naegle v. City of Centralia, 81 Ill. App. 334.

[245] Richardson v. Heydenfeldt, 46 Cal. 68.

[246] Foss v. City of Chicago, 56 Ill. 354.

[247] Hydes v. Joyes, 4 Bush (Ky.) 464.

[248] Thompson v. Schermerhorn, 6 N. Y. 92; Phelps v. Mayor &c., 112 N. Y. 216, 221; s. c. 19 N. E. 408; City of Kankakee v. Potter, 119 Ill. 324; s. c. 10 N. E. 212; McCrowell v. City of Bristol, 89 Va. 652; s. c. 16 S. E. 867.

officer, by the legislative body of the municipality.[249] An attempt to delegate such power to an executive officer is such covert, irresponsible, discretionary power as is wholly inconsistent with a proper exercise of the high and sovereign power of taxation or eminent domain. It might be used, and it does not affect the principle whether it was so used or not, as a cover to an unfair assessment. It might be used as an instrument of favoritism in letting contracts for work.[250] A provision in specifications for extra work, such as the superintendent of streets and the city engineer may require, and to be paid for pro rata, renders the proceedings void.[251]

§ **532. (n) Ordinances which are contracts.**—Where rights and privileges have been lawfully granted to and accepted by either a private or public corporation, and valuable improvements have been made on the faith of the grant, a contract is thereby entered into, and it can not be impaired by a law of the state, or by a municipality, where the right of repeal or alteration has not been reserved.[252] The passing of a resolution by the council letting a contract for lighting is a ministerial act in the nature of a business transaction.[253] Where an ordinance grants a franchise to a water company and permits the company to charge a fixed price for water and there is no power of repeal reserved, it becomes a contract, or at least the council has no right to reduce the price one half.[254] An ordinance passed under power given by the legislature which grants to a railroad company the right to construct its road upon a public landing and which prohibits the use of the track during specified hours is not only con-

[249] Bolton v. Gilleran, 105 Cal. 244, 248; s. c. 38 Pac. 881.

[250] Foss v. City of Chicago, 56 Ill. 354.

[251] Perine &c. Co. v. City of Pasadena, 116 Cal. 6; s. c. 47 Pac. 777; Bolton v. Gilleran, 105 Cal. 244; s. c. 38 Pac. 881.

[252] Baltimore Trust &c. Co. v. Mayor &c., 64 Fed. 153; Dartmouth College v. Woodward, 4 Wheat. 518; Chicago v. Sheldon, 9 Wall. 50; Shields v. Ohio, 95 U. S. 319; New Jersey v. Yord, 95 U. S. 104; Railroad Co. v. Richmond, 96 U. S. 521; Wright v. Nagle, 101 U. S. 791; Greenwood v. Freight Co., 105 U. S. 13; New Orleans &c. R. Co. v. Delamore, 114 U. S. 501; s. c. 5 S. Ct. 1009; New Orleans &c. Co. v. Louisiana &c. Co., 115 U. S. 650; s. c. 6 S. Ct. 252; New Orleans Water Works Co. v. Rivers, 115 U. S. 674; s. c. 6 S. Ct. 273; Sioux City &c. R. Co. v. Sioux City, 138 U. S. 98; s. c. 11 S. Ct. 226; St. Louis v. Western U. Tel. Co., 148 U. S. 92; s. c. 13 S. Ct. 485; Saginaw Gas &c. Co. v. City of Saginaw, 28 Fed. 529; Coastline R. Co. v. Mayor &c., 30 Fed. 646; Citizens' St. R. Co. v. City of Memphis, 53 Fed. 715; State v. Corrigan Con. St. R. Co., 85 Mo. 263; City of Burlington v. Burlington St. R. Co., 49 Iowa 144.

[253] Seitzinger v. Borough of Tamaqua, 187 Pa. St. 539; s. c. 41 Atl. 454.

[254] City of Ashland v. Wheeler, 88 Wis. 607; s. c. 60 N. W. 818.

tractual but is also an exercise of police power for the protection of the public.[255]

§ 533. **(o) Ordinances as to improvements—Valid.**—Where an ordinance describes the nature, character, locality and description of a proposed improvement, with reasonable certainty, it is sufficient and is valid.[256] An ordinance for an assessment for a street-improvement is sufficient as to the nature, character, and locality of an improvement, if it refers to the ordinance ordering the same, where the description therein is sufficient.[257] An ordinance specifying the material to be used, but not the character of the material to be used, is a sufficient compliance with the charter.[258] An ordinance for a street-extension will not be held invalid for failure to designate the grade of the street, and whether it is to be paved or not, where the amount apportioned on the property is not left in doubt.[259]

[255] Pittsburg &c. R. Co. v. Hood, 94 Fed. 618; s. c. 36 C. C. A. 423.

[256] Hynes v. City of Chicago, 175 Ill. 56; s. c. 51 N. E. 705; Delamater v. City of Chicago, 158 Ill. 575; s. c. 42 N. E. 444; Vane v. City of Evanston, 150 Ill. 616; s. c. 37 N. E. 901; City of Kankakee v. Potter, 119 Ill. 324; s. c. 10 N. E. 212; Adams Co. v. City of Quincy, 130 Ill. 566; s. c. 22 N. E. 624; Woods v. City of Chicago, 135 Ill. 582; s. c. 26 N. E. 608; Kimble v. City of Peoria, 140 Ill. 157; s. c. 29 N. E. 723; Otis v. City of Chicago, 161 Ill. 199; s. c. 43 N. E. 715; Cass v. People, 166 Ill. 126; s. c. 46 N. E. 729; Pearce v. Village of Hyde Park, 126 Ill. 287; s. c. 18 N. E. 824; Cramer v. City of Charleston, 176 Ill. 507; s. c. 52 N. E. 73.

[257] McManus v. People, 183 Ill. 391; s. c. 55 N. E. 886.

[258] Barber Asphalt Pav. Co. v. Hezel, 155 Mo. 391; s. c. 56 S. W. 449.

[259] Pearson v. City of Chicago, 162 Ill. 383; s. c. 44 N. E. 739. An ordinance providing for the construction of a sewer from its outfall at the north branch of the Chicago river is not ambiguous where the city had by a former ordinance located the channel of the river, the river being a well-defined and well-known stream with a natural bed and channel: Bickerdike v. City of Chicago, 185 Ill. 280; s. c. 56 N. E. 1096. The description of a street improvement as extending on a specified street from the south line of a street-railway right of way to the north line of another street-railway right of way on another named street, is not void for indefiniteness: Rawson v. City of Chicago, 185 Ill. 87; s. c. 57 N. E. 35. The grade of a street is sufficiently described in an ordinance whereby it is fixed on certain heights above low-water mark, by means of which it can be definitely determined: Mead v. City of Chicago, 186 Ill. 54; s. c. 57 N. E. 824. An ordinance giving the height of a curb at the back and inside of the gutter at certain points and providing for a uniform slope, is valid: Mead v. City of Chicago, 186 Ill. 54; s. c. 57 N. E. 824. An ordinance providing for an assessment to pay for an improvement made under an ordinance subsequently declared void is not void for a failure to describe the nature and character of the improvement: Hull v. West Chicago Park Com'rs, 185 Ill. 150; s. c. 57 N. E. 1. An ordinance is sufficiently certain in the description of a sewer where

§ 534. (p) Ordinances as to improvements—Invalid.—An ordinance prescribing that curbstones shall be imbedded on flat stones without stating what kinds is not sufficient and is void;[260] and it must also describe the height of the curb.[261] There should be no variance between the ordinance and the estimates on which it is based.[262] A municipal corporation can not under guise of paying for a street-improvement collect a fund in advance to be used at some indefinite

it places the beginning at the intersection of the center lines of two streets and extends along the center lines of streets named to a point of connection with another sewer, giving its depth at the point of beginning and at its intersections with cross streets: Ryder's Estate v. City of Alton, 175 Ill. 94; s. c. 51 N. E. 821. An ordinance describing the size, material and manner of construction of a catch-basin, specifying that it shall be built on a bottom of two-inch pine plank spiked to imbedded stringers, is sufficient without describing the stringers: Village of Hinsdale v. Shannon, 182 Ill. 312; s. c. 55 N. E. 327. An ordinance describing a grade measured from a plane of low-water mark in Lake Michigan in 1847 as established by a certain board, was held sufficient, as it was not necessary that the object from which the survey was to be made should have been established by ordinance: Chicago &c. R. Co. v. City of Chicago, 184 Ill. 154; s. c. 56 N. E. 410. A caption to an ordinance entitled "An ordinance for the construction of a pipe sewer . . . . with manholes and catch-basins complete," is sufficient: Village of Hinsdale v. Shannon, 182 Ill. 312; s. c. 55 N. E. 327. An ordinance providing for sewers in several streets is not void as providing for a double improvement: Beach v. People, 157 Ill. 659; s. c. 41 N. E. 1117; City of Springfield v. Green, 120 Ill. 269; s. c. 11 N. E. 261; Village of Hinsdale v. Shannon, 182 Ill. 312; s. c. 55 N. E. 327. In the following cases the ordinances were held sufficient as to the description of the improvement: Sawyer v. City of Chicago, 183 Ill. 57; s. c. 55 N. E. 645; In re Beechwood Ave., 194 Pa. St. 86; s. c. 45 Atl. 127; People v. Delaware &c. R. Co., 159 N. Y. 545; s. c. 54 N. E. 1093; City of Louisville v. Western Bank, 21 Ky. L. 1075; s. c. 54 S. W. 15; Bickerdike v. City of Chicago, 185 Ill. 280; s. c. 56 N. E. 1096. That the outlet of a sewer will be insufficient does not render the ordinance or the assessment invalid: Bickerdike v. City of Chicago, 185 Ill. 280; s. c. 56 N. E. 1096. That the commissioners may at any time before final report enlarge or reduce the taxing-district, see City of St. Louis v. Brown, 155 Mo. 545; s. c. 56 S. W. 298. Ordinance for public improvement under Ky. Stat., § 2834,—see City of Louisville v. Selvage, 21 Ky. L. 349; s. c. 51 S. W. 447.

[260] Lusk v. City of Chicago, 176 Ill. 207; s. c. 52 N. E. 54; Otis v. City of Chicago, 161 Ill. 199; s. c. 43 N. E. 715; City of Kankakee v. Potter, 119 Ill. 324; s. c. 10 N. E. 212; Levy v. City of Chicago, 113 Ill. 650; City of Sterling v. Galt, 117 Ill. 11; s. c. 7 N. E. 471; Cass v. People, 166 Ill. 126; s. c. 46 N. E. 729.

[261] Essroger v. City of Chicago, 185 Ill. 420; s. c. 56 N. E. 1086; Jarrett v. City of Chicago, 181 Ill. 242; s. c. 54 N. E. 946; Mills v. City of Chicago, 182 Ill. 249; s. c. 54 N. E. 987; Cruickshank v. City of Chicago, 181 Ill. 415; s. c. 54 N. E. 997.

[262] Mead v. City of Chicago, 186 Ill. 54; s. c. 57 N. E. 824.

time.[263] Where a resolution is adopted declaring a necessity for certain improvements, and an ordinance is passed providing for the improvements and a contract is made and subsequently the grade is established and a substantial change made the proceedings prior thereto are void.[264]

§ 535. (q) **Miscellaneous ordinances—Valid and invalid.**—An ordinance giving a gas company the right to lay pipes in the streets is not void because it fails to reserve the right in the city to determine what streets shall be used.[265] An ordinance denying the right of renewing a license is not illegal.[266] The granting by ordinance of power to a street-railway company to acquire by purchase or otherwise, any existing railway, or part thereof, does not create a monopoly and trust.[267] The following ordinances have been held invalid: An ordinance regulating fares to be charged by a street-railway outside the city limits;[268] an ordinance providing for the payment of interest on warrants for public work to be returned to the city on final payment, under a constitutional provision prohibiting the city from loaning its money on credit;[269] an ordinance taxing vehicles kept for public use where not taxed by the state;[270] an ordinance providing for imprisonment under a fine without giving an opportunity to pay the fine as provided by the charter;[271] an ordinance providing for a license and an illegal method of enforcement;[272] an ordinance for the sale of impounded stock, where no method is provided for a judicial hearing and judgment.[273] An illegal ordinance is wholly inoperative, and can not be rendered valid by an ordinance continuing in force all existing ordinances until altered or repealed.[274]

[263] State v. District Court &c., 80 Minn. 293; s. c. 83 N. W. 183.

[264] Whittaker v. City of Deadwood, 12 S. D. 608; s. c. 82 N. W. 202.

[265] City of Kalamazoo v. Kalamazoo &c. Co., 124 Mich. 74; s. c. 82 N. W. 811.

[266] Pfefferling v. Mayor &c., 88 Md. 475; s. c. 41 Atl. 778.

[267] Wood v. City of Seattle, 23 Wash. 1; s. c. 62 Pac. 135. As to validity of ordinances under Ky. Stat., §§ 2834, 2783, see Louisville Steam Forge Co. v. Anderson, 22 Ky. L. 397; s. c. 57 S. W. 617. Requirements as to validity under N. J. Gen. St., p. 575,—see Flood v. Atlantic City, 63 N. J. L. 530; s. c. 42 Atl. 829.

[268] City of South Pasadena v. Los Angeles &c. R. Co., 109 Cal. 315; s. c. 41 Pac. 1093.

[269] Moran v. Thompson, 20 Wash. 525; s. c. 56 Pac. 29.

[270] Ex parte Terrell, 40 Tex. Cr. App. 28; s. c. 48 S. W. 504.

[271] Calhoun v. Little, 106 Ga. 336; s. c. 32 S. E. 86. See Papworth v. City of Fitzgerald, 106 Ga. 378; s. c. 32 S. E. 363.

[272] German &c. Ins. Co. v. City of Minden, 51 Neb. 870; s. c. 71 N. W. 995.

[273] Armstrong v. Brown, 20 Ky. L. 1766; s. c. 50 S. W. 17.

[274] City of Omaha v. Harmon, 58 Neb. 339; s. c. 78 N. W. 623.

§ **536. (r) Jurisdictional matters in relation to ordinances.**—A court can not enjoin the passage of an ordinance for non-compliance with the rules, as such non-compliance merely relates to the validity.[275] Neither will a court of equity enjoin the enforcement of an ordinance on the ground of its invalidity, as in such case there is an adequate and complete remedy at law.[276] As a general rule, it may be stated that a court of equity will not determine as a matter of law whether an ordinance is valid or invalid.[277] Where an ordinance is, in effect, a contract entered into between the municipality and a third party, and no fraud or palpable abuse of discretion appears, the only question for judicial cognizance is whether there has been a violation of legal principles, or neglect of prescribed legal formalities in entering into the contract.[278] On an appeal from a fine for violation of a city ordinance the supreme court can not inquire into the legality of the proceeding, or correctness of the judgment, when the legality or constitutionality of the ordinance is not raised.[279] Courts will not review the proceedings of a city council by preventing the carrying-out of an ordinance for public improvement unless it is so unreasonable as to be void.[280] A resolution of a common council, modifying a contract procured by means of fraud and corruption, may be declared by the courts to be void; and such defense is available by the city when sued by the contractor upon the contract. In such case the resolution is part of the administrative duties of the council and not legislative.[281] A member of the city council who has voted for the passage of an ordinance may assert its invalidity as a taxpayer and citizen.[282] An ordinance though passed in excess of power in the council can not be collaterally attacked by the city.[283]

§ **537. (s) Curative ordinances.**—It sometimes happens that an ordinance is within the scope of power, express or implied, granted to the council, but by reason of some informality in the passage, or of some other preliminary step prescribed by the charter not being taken,

[275] State v. Superior Court &c., 105 Wis. 651; s. c. 81 N. W. 1046.

[276] Mayor &c. v. Patterson, 109 Ga. 370; s. c. 34 S. E. 600.

[277] Coykendall v. Hood, 55 N. Y. S. 718; s. c. 36 App. Div. (N. Y.) 558.

[278] Oakley v. City of Atlantic City, 63 N. J. L. 127; s. c. 44 Atl. 651. Cf. State v. Inhabitants &c., 60 N. J. L. 402; s. c. 38 Atl. 636; State v. Board &c., 57 N. J. L. 588; s. c. 31 Atl. 454; State v. Mayor &c., 58 N. J. L. 262; s. c. 33 Atl. 740.

[279] State v. Hohn, 50 La. An. 432; s. c. 23 So. 966.

[280] Field v. Village of Western Springs, 181 Ill. 186; s. c. 54 N. E. 929.

[281] Weston v. City of Syracuse, 158 N. Y. 274; s. c. 53 N. E. 12; Talcott v. City of Buffalo, 125 N. Y. 280; s. c. 26 N. E. 263.

[282] Stadler v. Fahey, 87 Ill. App. 411.

[283] Vicksburg &c. R. Co. v. Mayor &c., 48 La. An. 1102; s. c. 20 So. 664.

its validity as a binding contract is open to attack. In such case the ordinance may be rendered valid by a curative ordinance, subject, of course, to intervening rights. Where the city has authority to contract but does not expressly do so, it may ratify it after the work has been done.[284] An ordinance is necessary to ratify an unauthorized act of a council committee.[285] The charter, or statute, frequently provides in matters of public improvements and special assessments, that if, for any reason, the ordinance shall be found invalid on which the improvement is based, it may be rendered valid by a subsequent curative act. And in the absence of a constitutional limitation the curative act may be by the legislature.[286] A curative statute may be so construed although it does not use the words "ratify," "confirm" or "validate."[287]

§ 538. **(t) Scope, force, effect, etc., of ordinances.**—An ordinance may combine contractual as well as police regulations,[289] and may be passed to take effect in the event of a contingency.[290] Within the corporate limits the police provisions of an ordinance have the force of a legislative enactment.[291] An ordinance, adopted under authority given by statute, giving a railroad the right to construct its track along certain streets subject to restrictions and limitations, when accepted becomes as binding as a statute and is a limitation on the power of the road.[292] The legislature may provide that on the annexation of one corporation to another any ordinance in force shall continue in force.[293] An ordinance is not retrospective.[294] To make an ordinance applicable to a street-railway, or railway operating on the city streets, it must appear that the company was existing at the time the ordinance was passed and was one of the railroads designated.[295] A railroad accepting the benefits of an ordinance is subject to burdens imposed by it.[296] A town ordinance declaring a particular thing a nuisance does not make it so.[297]

[284] City of Chester v. Eyre, 181 Pa. St. 642; s. c. 37 Atl. 837.

[285] Maudlin v. City of Trenton, 67 Mo. App. 452.

[286] Nottage v. City of Portland, 35 Or. 539; s. c. 58 Pac. 883.

[287] Nottage v. City of Portland, supra.

[289] Pittsburg &c. R. Co. v. Hood, 94 Fed. 618; s. c. 36 C. C. A. 423.

[290] Heman Constr. Co. v. Loevy, 64 Mo. App. 430; s. c. 2 Mo. App. Repr. 1123.

[291] Pittsburg &c. R. Co. v. Hood, 94 Fed. 618; s. c. 36 C. C. A. 423.

[292] Tudor v. Chicago &c. R. Co., 154 Ill. 129; s. c. 39 N. E. 136.

[293] Swift v. Klein, 163 Ill. 269; s. c. 45 N. E. 219.

[294] City of Willow Springs v. Withaupt, 61 Mo. App. 275; s. c. 1 Mo. App. Repr. 388.

[295] Thompson v. Citizens' St. R. Co., 152 Ind. 461; s. c. 53 N. E. 462.

[296] Chicago &c. R. Co. v. People, 79 Ill. App. 529.

[297] Board &c. v. Norman, 51 La. An. 736; s. c. 25 So. 401; Walker v. Jameson, 140 Ind. 591; s. c. 37 N. E.

§ **539. Motives of council not to be impeached.**—A city council being "a miniature general assembly and its authorized ordinances having the force of laws passed by the legislature of the state,"[298] it follows that when a municipal corporation passes an ordinance legislative in its character importing no private contract or rights, the members of the corporation enjoy the same prerogatives as members of a state legislature, and their conduct or motives in passing the ordinance can not be questioned by way of impeaching the validity of the ordinance.[299] But in Ohio it has been held that this immunity from impeachment for fraudulent motives or abuse of power does not attach to all of the acts of a city council which may assume the form of an ordinance; and that where the city council was empowered to regulate the price of gas, and under the colorable exercise of such power for a fraudulent purpose passed an ordinance fixing the price of gas at a rate at which they well knew that it could not be manufactured and sold without loss, the motives of the council could be properly inquired into.[300] The officers of a municipal corporation are of course exempt from personal liability for the passage of any ordinance within their authority; nor are they personally liable for any ordinance not within their authority, for such an ordinance is absolutely void.[301]

§ **540. Construction of ordinances.**—The canons of construction that are employed in the interpretation of statutes are also used to determine the meaning of ordinances.[302] Provisions that are essentially penal are strictly construed,[303] but ordinary police regulations,

402; 39 N. E. 869; 49 Am. St. 222; 28 L. R. A. 679; City of Evansville v. Miller, 146 Ind. 613; s. c. 45 N. E. 1054.

[298] Taylor v. City of Carondelet, 22 Mo. 105.

[299] Villavaso v. Barthet, 39 La. An. 247, 258; s. c. 1 So. 599; Borough of Freeport v. Marks, 59 Pa. St. 253; Buell v. Ball, 20 Iowa 282.

[300] State v. Cincinnati Gas &c. Co., 18 Ohio St. 262, 300; citing Davis v. Mayor &c., 1 Duer (N. Y.) 451. But in the opinion in the Ohio case there is a dictum that inquiry into the motives of the council in passing an ordinance for purposes of police regulation or municipal government would perhaps be incompetent; as the courts would have no jurisdiction to impeach such an ordinance for such a reason. Judge Dillon adds the great weight of his opinion to the effect that the acts of municipal bodies, whether in the form of resolutions or ordinances, may be impeached for fraud at the instance of persons injured thereby: 1 Dillon Munic. Corp., § 311.

[301] 1 Dillon Munic. Corp., § 313.

[302] In re Yick Wo, 16 Cal. 294; s. c. 9 Pac. 139; 58 Am. R. 12; State v. Kirkley, 29 Md. 85; Zorger v. City of Greensburgh, 60 Ind. 1; Quinette v. City of St. Louis, 76 Mo. 402. Construction is a question of law: Pennsylvania Co. v. Frana, 13 Ill. App. 91; Denning v. Yount, 9 Kan. App. 708; s. c. 59 Pac. 1092; 61 Pac. 803.

[303] Town of Pacific v. Seifert, 79 Mo. 210; Krickle v. Commonwealth, 1 B. Mon. (Ky.) 361; City of St. Louis v. Goebel, 32 Mo. 295. So,

even though a penalty be attached, are not subjected to so close a scrutiny.[304] It is proper to consider the title of the ordinance[305] and the mischief which it was designed to remedy,[306] and also in doubtful cases a contemporaneous construction by the parties interested.[307] General words and sweeping clauses are controlled by particular descriptions preceding them.[308] If an ordinance is susceptible of two constructions, that one must prevail which will preserve its validity in preference to a construction that will render it invalid; and this must be done although the construction adopted may not be the most obvious or natural or the literal one.[309] Thus, an ordinance making it unlawful to ride a bicycle across a public bridge is limited to the footways of the bridge; otherwise it would be void as against common right.[310] And an ordinance providing that "no person shall drive or lead any horse or cart or wheel-carriage on the footway or sidewalk of any street" does not prohibit the carting of earth from excavations across the sidewalk.[311] An ordinance is to be resolved against the city where it is doubtful as to its validity as conflicting with individual rights.[312] Where an ordinance is clear and explicit, previous

statutes imposing power to license must be construed strictly: Ex parte Sims, 40 Fla. 432; s. c. 25 So. 280.

[304] A reasonable construction is the rule: First Municipality v. Cutting, 4 La. An. 335; Rounds v. Mumford, 2 R. I. 154; Commonwealth v. Robertson, 5 Cush. (Mass.) 438; Merriam v. City of New Orleans, 14 La. An. 318; Master of Vintners' Co. v. Passey, 1 Burr. 235; Poulters' Co. v. Phillips, 6 Bing. N. C. 314. Liberal rules are applied to town by-laws: Whitlock v. West, 26 Conn. 406.

[305] Martindale v. Palmer, 52 Ind. 411.

[306] Ho Ah Kow v. Nunan, 5 Saw. 552.

[307] Wright v. Chicago &c. R. Co., 7 Ill. App. 438; State v. Severance, 49 Mo. 401.

[308] Schultz v. Cambridge, 38 Ohio St. 659; Snyder v. City of North Lawrence, 8 Kan. 82; Keokuk &c. Co. v. City of Quincy, 81 Ill. 422. Cf. Illinois &c. R. Co. v. City of Galena, 40 Ill. 344; City of St. Louis v. Herthel, 88 Mo. 128.

[309] Commonwealth v. Dow, 10 Met. (Mass.) 382; Mayor &c. v. Hughes, 1 Gill & J. (Md.) 480; Newland v. Marsh, 19 Ill. 376; Iowa &c. Co. v. Webster Co., 21 Iowa 221; Johnson v. Philadelphia, 60 Pa. St. 445; Roosevelt v. Godard, 52 Barb. (N. Y.) 533; Colwell v. May's Landing Co., 19 N. J. Eq. 245; Bigelow v. West Wis. R. Co., 27 Wis. 478; Dow v. Norris, 4 N. H. 16; Inkster v. Carver, 16 Mich. 484; Cooley Const. Lim. 184.

[310] Swift v. City of Topeka, 43 Kan. 671; s. c. 23 Pac. 1075.

[311] "If so construed," said the court, "it would prevent a party from building upon his own lot and would deny the right of an abutting owner of driving his carriage from a stable: In re O'Keefe, 19 N. Y. S. 676; s. c. 46 N. Y. St. 557. See also, Gilluly v. City of Madison, 63 Wis. 518; s. c. 24 N. W. 137; Ex parte Ah Lit, 26 Fed. 512; Mayor &c. v. Georgia R. Co., 72 Ga. 800. Cf. Commonwealth v. Curtis, 9 Allen (Mass.) 266, 268.

[312] Slaughter v. O'Berry, 126 N. C. 181; s. c. 35 S. E. 241.

action of the council will not be permitted to affect the construction.[313]

§ 541. **The same subject continued—Miscellaneous.**—After a contract has been forfeited an ordinance extending the time for the completion of the work thereunder does not give life to the forfeited contract and render valid an assessment.[314] An ordinance granting the mayor power to determine whether a person applying for a license to sell cigarettes has good character and reputation, and is a suitable person to be entrusted with their sale, and requiring him to license every one complying with these conditions, vests in him no arbitrary power to grant or refuse a license.[315] An ordinance which directs a city clerk to issue a license if an applicant has complied with the law, and shall not be in arrears for previous years, does not confer judicial power.[316] Where, as a condition of allowing an electric company to occupy the streets, all city buildings occupied as police or fire stations are to be wired and lighted, it applies to all police and fire stations whether erected before or after the ordinance was passed.[317] An ordinance providing that "the vault of every privy which may be constructed," etc., applies only to those constructed after its passage.[318] An ordinance which provided that it should not go into effect until after receiving a majority of the votes of the legal voters at an election held as therein provided, goes into effect, so far as the election is concerned, when it receives the approval of the mayor.[319] An ordinance requiring persons riding or driving to check up or halt for pedestrians on approaching an alley or street crossing, does not apply to street-cars.[320] Power to a mayor to release a person from imprisonment does not give power to release a judgment under which the imprisonment was made.[321] A statute requiring the yeas and nays to be called on the passage of ordinances does not apply to cities under special charters.[322] Where a resolution is ambiguous the construction placed upon it by the council which passed it, and the acquiescence of the incumbent of the office affected by it, are competent evidence of the in-

[313] Stadler v. Fahey, 87 Ill. App. 411.

[314] Neill v. Gates, 152 Mo. 585; s. c. 54 S. W. 460.

[315] Gundling v. Chicago, 177 U. S. 183; s. c. 20 S. Ct. 633.

[316] Baker v. City of Lexington, 21 Ky. L. 809; s. c. 53 S. W. 16.

[317] Kensington Electric Co. v. City of Philadelphia, 187 Pa. St. 446; s. c. 41 Atl. 309.

[318] Forbes v. Mayor &c., 1 Marv. (Del.) 186.

[319] Parker v. Zeisler, 73 Mo. App. 537.

[320] Citizens' R. Co. v. Ford, 93 Tex. 110; s. c. 53 S. W. 575.

[321] City of Newton v. Bergbower, 63 Ill. App. 201.

[322] Preston v. City of Cedar Rapids, 95 Iowa 71; s. c. 63 N. W. 577.

tention of the council.[323] An ordinance prohibiting the placing of merchandise upon sidewalks beyond the front line of the lot applies to pedlers as well as storekeepers.[324] In an ordinance prohibiting the erection of wooden or frame buildings, "wooden" and "frame" mean the same thing.[325]

§ 542. Ordinances void in part.—It is well settled that invalid provisions in an ordinance do not necessarily render the ordinance totally void. The rule to be applied is that if part of a law is void other essential and connected parts are also void,[326] but where that part which is void is independent and not essentially connected with the remainder the law will stand.[327] Thus, it was held that where a

[323] Saunders v. Nashua, 69 N. H. 492; s. c. 43 Atl. 620.

[324] State v. Messolongitis, 74 Minn. 165; s. c. 77 N. W. 29.

[325] Ward v. City of Murphysboro, 77 Ill. App. 549. Construction of ordinances under Kan. Gen. St. 1889, in relation to desecration of the Sabbath,—see City of Kansas City v. Grubel, 57 Kan. 436; s. c. 46 Pac. 714. Under city and village act of Illinois the provision permitting an owner to make a sidewalk in front of his property and thus relieve it from assessment applies to improvements by special taxation as well as special assessment: Village of Western Springs v. Hill, 177 Ill. 634; s. c. 52 N. E. 959. Construction of Burns Rev. Stat. Ind. 1901, § 1709, in reference to riding on sidewalks,—see Town of Whiting v. Doob, 152 Ind. 157; s. c. 52 N. E. 759. Construction of Ky. St., § 3304, in relation to ordinances,—see Roberts & Co. v. City of Paducah, 95 Fed. 62. Construction and requirements of Iowa code 1873, § 493, as amended,—see German Ins. Co. v. City of Manning, 95 Fed. 597. Construction of N. Y. code as to boundary of district under ordinance,—see Farrington v. City of Mt. Vernon, 64 N. Y. S. 863; s. c. 51 App. Div. (N. Y.) 250.

[326] In re Ah Toy, 45 Fed. 795; Town of Eldora v. Burlingame, 62 Iowa 32; s. c. 17 N. W. 148; Town of Cantril v. Sainer, 59 Iowa 26; s. c. 12 N. W. 753; State v. Treasurer &c., 45 N. J. L. 288; Trowbridge v. Mayor &c., 46 N. J. L. 140; State v. Mayor &c., 38 N. J. L. 110; Commonwealth v. Stodder, 2 Cush. (Mass.) 562; Commonwealth v. Dow, 10 Met. (Mass.) 382; Fisher v. McGirr, 1 Gray (Mass.) 1; Amesbury v. Bowditch &c. Ins. Co., 6 Gray (Mass.) 596; Warren v. Mayor &c., 2 Gray (Mass.) 84; Ex parte Christensen, 85 Cal. 208; s. c. 24 Pac. 747; State v. Cainan, 94 N. C. 883; City of St. Louis v. St. Louis R. Co., 14 Mo. App. 221; City of St. Louis v. St. Louis R. Co., 89 Mo. 44; s. c. 1 S. W. 305; City of Piqua v. Zimmerlin, 35 Ohio St. 507; Rogers v. Jones, 1 Wend. (N. Y.) 237; Rau v. Little Rock, 34 Ark. 303; Baker v. Town of Normal, 81 Ill. 108; City of Quincy v. Bull, 106 Ill. 337; Harbaugh v. City of Monmouth, 74 Ill. 367; State v. Chamberlin, 37 N. J. L. 388.

[327] State v. Inhabitants &c., 45 N. J. L. 318, 325; s. c. 46 N. J. L. 209; Wilcox v. Hemming, 58 Wis. 144; s. c. 15 N. W. 435; 46 Am. R. 625; State v. Mayor &c., 47 N. J. L. 286; State v. Hardy, 7 Neb. 377; State v. Kantler, 33 Minn. 69; s. c. 21 N. W. 856; State v. Cantieny, 34 Minn. 1; s. c. 24 N. W. 458; Cooper v. District of Columbia, MacArth. & M. 250; State v. Clarke, 54 Mo. 17. When

statute authorized the mayor to impose a fine of not more than $20 "in his discretion" for certain offenses, an ordinance imposing a fine of not less than three nor more than ten dollars being void as to the fine, the whole enactment was void and could not be treated as ordaining an offense.[328] But where the charter gave express power to prohibit the sale of certain articles except at a public market, an ordinance in pursuance thereof was valid, although it covered some articles not included in the enumeration.[329]

§ 543. Amendment and repeal—By subsequent ordinance.—The power of a municipal corporation to enact ordinances includes by implication the power to amend or repeal them.[330] The general rules

it prohibits disjunctively two or more acts, the invalidity of one part does not affect the validity of the others: Kettering v. City of Jacksonville, 50 Ill. 39. But the parts must be entire and distinct from each other: Municipality v. Morgan, 1 La. An. 111, 116; Rex v. Faversham Fishermen's Co., 8 T. R. 352; Willcock Munic. Corp. 160, pl. 384; City of Eureka v. Jackson, 8 Kan. App. 49; s. c. 54 Pac. 5; City of Rockville v. Merchant, 60 Mo. App. 365; s. c. 1 Mo. App. Repr. 84; Eureka City v. Wilson, 15 Utah 67; s. c. 48 Pac. 150; In re Mansfield, 106 Cal. 400; s. c. 39 Pac. 775; City of Lamar v. Weidman, 57 Mo. App. 507; City of Belleville v. Citizens' Horse R. Co., 152 Ill. 171; s. c. 38 N. E. 584; City of Seattle v. Pearson, 15 Wash. 575; s. c. 46 Pac. 1053; State v. Newman, 96 Wis. 258; s. c. 71 N. W. 438. If the valid part can not stand alone or be separated it is wholly void: City of Tampa v. Salomonson, 35 Fla. 446; s. c. 17 So. 581. Where an ordinance creates two or more offenses that are severable, those which are valid may be enforced and those that are invalid may not: Ex parte Bizzell, 112 Ala. 210; s. c. 21 So. 371; Canova v. Williams, 41 Fla. 509; s. c. 27 So. 30. Cf. Baker v. City of Lexington, 21 Ky. L. 809; s. c. 53 S. W. 16.

[328] Landis v. Borough of Vineland, 54 N. J. L. 75; s. c. 25 Atl. 409. The argument was that the maximum limit of ten dollars was opposed to an inference that it was intended to create an offense which might be punishable by a twenty-dollar fine. One section of an ordinance making it an offense to continue or allow the continuance of a house of ill fame for two days after it shall have been so adjudged under a prior void section, the two are so connected that they must fall together: State v. Webber, 107 N. C. 962; s. c. 12 S. E. 598.

[329] Shelton v. Mayor &c., 30 Ala. 540. See also, Eureka Springs v. O'Neal, 56 Ark. 350; s. c. 19 S. W. 969.

[330] Welch v. Bowen, 103 Ind. 252; s c. 2 N. E. 722; Bank of Chenango v. Brown, 26 N. Y. 467; People v. Collins, 3 Mich. 343, 347; Rex v. Bird, 13 East 367; Rex v. Ashwell, 12 East 22; In re Great Western R. Co., 23 Up. Can. C. P. 28; Greeley v. City of Jacksonville, 17 Fla. 174; Bloomer v. Stolley, 5 McLean 158; Rice v. Foster, 4 Harr. (Del.) 479; Santo v. State, 2 Iowa 165; s. c. 63 Am. D. 487; In re Hall, 10 Neb. 537; s. c. 7 N. W. 287; City Council v. Wentworth &c. Church, 4 Strobh. (S. C.) 306. But where the record showed that a motion changing certain provisions was adopted and that "the mayor was instructed to pre-

governing the amendment and repeal of statutes are applied to the legislation of municipal corporations. An amendment of a void ordinance is ineffectual to create a valid and enforceable ordinance,[331] but if only a part of the original ordinance is invalid an amendment of that part will stand.[332] A repealing ordinance may contain a clause excepting from its operation offenses committed and forfeitures incurred previous to the repeal,[333] but if there be no reservation all violations of the former ordinance are blotted out, as it were, and the courts are also powerless to proceed further in pending prosecutions.[334] Where a repealing ordinance is itself repealed the original ordinance is restored to full force and efficacy.[335] The power to amend and repeal is subject to the qualification that it can not be exercised in such a way as to impair private rights which have been acquired under a lawful ordinance.[336] An ordinance can be amended

pare an ordinance covering said changes," it was held not to be in itself a complete legislative act: Jones v. McAlpine, 64 Ala. 511.

[331] Cowley v. Town of Rushville, 60 Ind. 327; Board &c. v. Markle, 46 Ind. 96; Blakemore v. Dolan, 50 Ind. 194; Ford v. Booker, 53 Ind. 395; State v. Kantler, 33 Minn. 69, 77; s. c. 21 N. W. 856.

[332] State v. Kantler, 33 Minn. 69; s. c. 21 N. W. 856. An amending ordinance which does not attempt to amend the old by adding to or taking from one of its sections, but contains in full the section as it was designed to be when amended, sufficiently complies with a statutory requirement that an amending ordinance shall contain the ordinance or part thereof which it attempts to review or amend: Larkin v. Burlington &c. R. Co., 85 Iowa 492; s. c. 52 N. W. 480; Town of Decorah v. Dunstan, 38 Iowa 96.

[333] City of Kansas v. White, 69 Mo. 26. See also, Pardridge v. Village of Hyde Park, 131 Ill. 537; s. c. 23 N. E. 345.

[334] Day v. City of Clinton, 6 Ill. App. 476; Barton v. Incorporation &c. of Gadsden, 69 Ala. 495. And no subsequent ordinance or statute can revive the offense by attempting to limit the effect of the repeal: City of Kansas v. Clark, 68 Mo. 588. The rule is not confined to penal ordinances: Kaime v. Harty, 4 Mo. App. 357. A statute abrogating the common-law rule in relation to the repeal of laws does not apply to municipal ordinances: Naylor v. City of Galesburg, 56 Ill. 285.

[335] Mayor &c. v. Broadway &c. R. Co., 97 N. Y. 275; citing People v. Davis, 61 Barb. (N. Y.) 456; Van Denburgh v. President &c., 66 N. Y. 1. Day v. City of Clinton, 6 Ill. App. 476, cited in one text-book to support the contrary proposition, merely decides that the guilt of one whose offense has been wholly expurgated by the repeal of the law creating it can not be revived by a repeal of the repealing act.

[336] Rex v. Bird, 13 East 367; Rex v. Ashwell, 12 East 22; Bigelow v. Hillman, 37 Maine 52; People v. O'Brien, 111 N. Y. 1; s. c. 18 N. E. 692; Nelson v. St. Martin's Parish, 111 U. S. 716; Pond v. Negus, 3 Mass. 230; s. c. 3 Am. D. 131; Cunningham v. Corporation &c. of Almonte, 21 Up. Can. C. P. 459; In re Great Western R. Co., 23 Up. Can. C. P. 28; Louisiana v. Pilsbury, 105 U. S. 278; Chicago &c. R. Co. v. Minnesota &c. R. Co., 14 Fed. 525; City of Terre Haute v.

only by an ordinance and not by resolution; thus, wards must be changed by ordinance.[337] An ordinance can only be amended by an act of the same grade. Orders passed upon motion before the council changing the material provided for in the ordinance are nullities.[338] But not all ordinances are repealable at the mere will of the council. Thus where an ordinance is, in fact, a contract and has been accepted, it is not repealable without the consent of the other party thereto.[339] And so after a tax has been levied by a council in aid of a railroad and the road has been built the ordinance can not be repealed.[340] But where legislative authority has been given to a council to grant to a street-railroad company the right to occupy a street on condition of its paving the street, the ordinance may be repealed if the legislative act left the paving regulation in the discretion of the council.[341] An ordinance for improvements of streets, and street intersections, may be repealed in part without impairing its validity in other respects.[342]

§ **544. Repeal by act of the legislature.**—"The legislature can not by express intendment repeal ordinances, though a repeal may be effected by the passage of a general law that is inconsistent with the ordinance."[343] When a city of the second class having lawful authority passed an ordinance to suppress houses of prostitution, and while it was in full force a new law for the government of cities of that class

Lake, 43 Ind. 480; State v. Graves, 19 Md. 351; Baldwin v. Smith, 82 Ill. 162; People v. Chicago &c. R. Co., 18 Ill. App. 125; Gormley v. Day, 114 Ill. 185; s. c. 28 N. E. 693; City of Quincy v. Bull, 106 Ill. 337; Cape May &c. R. Co. v. City of Cape May, 35 N. J. Eq. 419; Reiff v. Conner, 10 Ark. 241; State v. Pinto, 7 Ohio St. 355; Road in Augusta Tp., 17 Pa. St. 71, 75; City of Des Moines v. Chicago &c. R. Co., 41 Iowa 569; City of Burlington v. Burlington St. R. Co., 49 Iowa 144; s. c. 31 Am. R. 145; City Council &c. v. Wentworth &c. Church, 4 Strobh. L. (S. C.) 306; Mayor &c. v. Lumpkin, 5 Ga. 447. But "no person can claim immunity from proper police regulation of his vested interests because they were based upon the privileges or under the protection of a municipal ordinance:" Horr & Bemis Munic. Ord., § 67, and cases cited.

[337] Cascaden v. City of Waterloo, 106 Iowa 673; s. c. 77 N. W. 333.

[338] Galt v. City of Chicago, 174 Ill. 605; s. c. 51 N. E. 653; Davis v. City of Litchfield, 155 Ill. 390; s. c. 40 N. E. 354.

[339] Baltimore Trust &c. Co. v. Mayor &c., 64 Fed. 153.

[340] Missouri &c. Trust Co. v. Smart, 51 La. An. 416; s. c. 25 So. 443.

[341] City of Philadelphia v. Bowman, 175 Pa. St. 91; s. c. 34 Atl. 353.

[342] Noonan v. People, 183 Ill. 52; s. c. 55 N. E. 679.

[343] Horr & Bemis Munic. Police Ord., §§ 60, 61. A statute regulating the taking-up of stray animals, and providing that nothing in any municipal charter shall be construed to authorize an ordinance dealing with the subject in any other manner, repeals an existing valid ordinance of that description: Town of Marietta v. Fearing, 4 Ohio 427.

was passed containing authority to the city council to "restrain, prohibit and suppress" houses of prostitution, and the former act was repealed without a saving clause, it was held that the new act did not repeal existing ordinances.[344] And as a general rule an ordinance will not be deemed to be repealed by a statute unless they are irreconcilably inconsistent with each other.[345] But where it is the evident design of the legislature to assume the exclusive regulation of a subject which had been before permitted to be regulated by municipal ordinances, the latter must yield, and such legislative intent will more readily be inferred if the ordinance in question would otherwise be unreasonable and oppressive.[346]

§ **545. Repeals by implication.**—It has been laid down as law that a general statute without negative words will not repeal the particular provisions of a former statute unless the two are plainly inconsistent.[347] It is also a doctrine that a subsequent statute revising the whole subject-matter of a former one will operate as a repeal of it, though it contains no express words of repeal.[348] Both these rules are without doubt as applicable to ordinances as to statutes.[349] Where

[344] "There has been no attempt on the part of the legislature to repeal the law creating cities of the second class and destroy the organization of the same. It is true that a new act has taken the place of the former and continues the organization of such cities with new and modified powers. But this is very different from an entire repeal. The doctrine is well settled that a change in the form of government of a community does not ipso facto abrogate pre-existing laws:" In re Hall, 10 Neb. 537; s. c. 7 N. W. 287; citing Trustees v. Erie, 31 Pa. St. 515–517. See also, Waring v. Mayor &c., 24 Ala. 701.

[345] Mayor &c. v. Hyatt, 3 E. D. Smith (N. Y.) 156, holding that a statute by which a violation of the ordinances of New York was declared a misdemeanor and punishable by fine or imprisonment did not operate as a repeal of the penalty given by those ordinances nor take away the right of the corporation to prosecute a civil action for the penalty. See also, March v. Commonwealth, 12 B. Mon. (Ky.) 25; State v. Labatut, 39 La. An. 513; s. c. 2 So. 550; Baldwin v. Murphy, 82 Ill. 485; Quinette v. City of St. Louis, 76 Mo. 402; Franklin v. Westfall, 27 Kan. 614; Chamberlain v. City of Evansville, 77 Ind. 542.

[346] Southport v. Ogden, 23 Conn. 128.

[347] Conley v. Supervisors &c., 2 W. Va. 416; Brown v. County Com'rs, 21 Pa. St. 37; Bank of Louisiana v. Farrar, 1 La. An. 49, 54; Lenz v. Sherrott, 26 Mich. 139; Croll v. Village of Franklin, 40 Ohio St. 340; Barker v. Smith, 10 S. C. 226.

[348] Inhabitants &c. v. Estlow, 43 N. J. L. 13; Bartlett v. King, 12 Mass. 537; Town of Decorah v. Dunstan, 38 Iowa 96; Goodenow v. Buttrick, 7 Mass. 140; Booth v. Town of Carthage, 67 Ill. 102; Commonwealth v. Cooley, 10 Pick. (Mass.) 37; Ellis v. Page, 1 Pick. (Mass.) 43, 45; Wakefield v. Phelps, 37 N. H. 295; Farr v. Brackett, 30 Vt. 344.

[349] City of Providence v. Union R.

the final chapter of a revising ordinance recited a long list of ordinances which were expressly repealed, the omission of certain ordinances from the list was held to preserve them in full force, although the title of the ordinance imported to comprise all former enactments.[350] The general ordinances of a city were revised and consolidated for publication and were thus adopted and re-enacted. An ordinance under which a prosecution had been begun was re-enacted in substantially the same language without any words of repeal or any clause saving pending prosecutions. The effect of the re-enactment was declared to be to continue in force the provisions of the original ordinance and not to abate or affect the prosecution.[351] The rule is that where two ordinances are inconsistent with each other and there is no express language repealing the earlier ordinance and both relate to the same subject-matter the later repeals the former.[352] But an ordinance will not be construed as repealing by implication a prior ordinance unless there is an irreconcilable repugnancy between the two, or it clearly appears that the new ordinance was intended to su-

Co., 12 R. I. 473; Booth v. Town of Carthage, 67 Ill. 102.

[350] City of Providence v. Union R. Co., 12 R. I. 473. The case did not, however, turn upon this circumstance alone.

[351] City of Junction City v. Webb, 44 Kan. 71; s. c. 23 Pac. 1073; citing State v. Gumber, 37 Wis. 298; State v. Wish, 15 Neb. 448; s. c. 19 N. W. 686; Kesler v. Smith, 66 N. C. 154; Fullerton v. Spring, 3 Wis. 667; Scheftels v. Tabert, 46 Wis. 439; s. c. 1 N. W. 156; Cheezen v. State, 2 Ind. 149; Martindale v. Martindale, 10 Ind. 566; Cordell v. State, 22 Ind. 1; State v. Baldwin, 45 Conn. 134; Middleton v. Railroad Co., 26 N. J. Eq. 269; United Hebrew Ass'n v. Benshimol, 130 Mass. 325; Lisbon v. Clark, 18 N. H. 234.

[352] Dutton v. City of Aurora, 114 Ill. 138; s. c. 28 N. E. 461; Union Trust Co. v. Trumbull, 137 Ill. 146; s. c. 27 N. E. 24; Korah v. City of Ottawa, 32 Ill. 121; Culver v. Third Nat. Bank, 64 Ill. 528; Von Der Leith v. State, 60 N. J. L. 46; s. c. 37 Atl. 436; Von Der Leith v. State, 60 N. J. L. 590; s. c. 40 Atl. 1132; Smyrk v. Sharp, 82 Md. 97; s. c. 35 Atl. 411; City of Grand Rapids v. Norman, 110 Mich. 544; s. c. 68 N. W. 269; Knight v. Town of West Union, 45 W. Va. 194; s. c. 32 S. E. 163. A later ordinance relating to the same subject-matter as a former one and being identical in language except as to the number of feet repeals the former, although the later ordinance is called a "building ordinance and the prior one a fire ordinance, the purpose of each being the same: Cook v. Sanitary Dist. &c., 177 Ill. 599; s. c. 52 N. E. 870. An amended ordinance purporting to amend "as follows" (giving schedule of licenses) and not referring to other sections does not by implication repeal the original ordinance: Goldsmith v. Mayor &c., 120 Ala. 182; s. c. 24 So. 509. An ordinance providing for an improvement may repeal a former ordinance relating to the manner of letting contracts: Barber &c. Co. v. Ullman, 137 Mo. 543; s. c. 38 S. W. 458.

persede all others, and embrace the entire regulation on the subject.[353] An ordinance providing for the issuance of licenses to sell liquors, restrictions in regard thereto, requiring bonds conditioned for the payment of license at such rate as might from time to time be established, and repealing all ordinances in relation to the subject-matter or inconsistent therewith, does not repeal a prior ordinance in relation to the amount of the license fee.[354] The provision of a charter authorizing a council to punish persons who knowingly sell food which is unwholesome is a repeal, in effect, of an existing ordinance providing punishment for such offense but not requiring it to be done knowingly.[355] The reasons which induced the repealing of an ordinance are not a proper matter for investigation by the courts.[356] The saving clause of a statute providing that a repeal shall not affect any right accrued, or duty imposed, or penalty incurred thereunder is not to be applied to ordinances which are mere by-laws of the city.[357] The repeal of an ordinance without a saving clause is not retrospective and does not render valid an act which was illegal when done.[358] A mere resolution not passed or published as an ordinance will not repeal a valid ordinance duly enacted. The principle involved is that an ordinance can only be repealed by an ordinance.[359] An ordinance can only be amended, repealed or suspended by action of the same dignity as the ordinance itself.[360] And so, as a rule, an ordinance that can be adopted only by a certain vote must be repealed by a similar vote.[361] The effect of a repeal of an ordinance imposing a penalty has the effect of and operates as a pardon of the offense as to any suit pending.[362]

[353] People v. Harrison, 185 Ill. 307; s. c. 56 N. E. 1120.

[354] People v. Mount, 87 Ill. App. 194; s. c. affirmed 186 Ill. 560; 58 N. E. 360. Ky St. § 3350 repeals ordinances of city of Owensboro in relation to payment of fees of city marshal: Wethington v. City of Owensboro, 21 Ky. L. 960; s. c. 53 S. W. 644.

[355] People v. Brill, 120 Mich. 42; s. c. 78 N. W. 1013.

[356] Southern Bell Tel. &c. Co. v. City of Richmond, 98 Fed. 671.

[357] Denning v. Yount, 9 Kan. App. 708; s. c. 61 Pac. 803.

[358] Denning v. Yount, 9 Kan. App. 708; s. c. 61 Pac. 803.

[359] People v. Mount, 87 Ill. App. 194; Backhaus v. People, 87 Ill. App. 173; Swindell v. State, 143 Ind. 153; s. c. 42 N. E. 528.

[360] Chicago &c. R. Co. v. City of Chicago, 174 Ill. 439; s. c. 51 N. E. 596.

[361] Naegely v. City of Saginaw, 101 Mich. 532; s. c. 60 N. W. 46. An ordinance fixing a fiscal year is repealable: First Nat. Bank v. Keith, 84 Ill. App. 103. A second ordinance held to not repeal a prior ordinance, in Thomson v. People, 184 Ill. 17; s. c. 56 N. E. 383.

[362] Rutherford v. Swink, 96 Tenn. 564; s. c. 35 S. W. 554.

§ **546. Power to impose penalties.**—Since an ordinance without a penalty would be nugatory, a corporation that has the power to pass the ordinance has an implied power to provide for its enforcement by proper and reasonable fines against those who break it.[363] Thus, a power to "open, widen, * * * and keep in repair streets," etc., and to pass ordinances necessary to carry into effect the power granted, confers authority to punish by fine any person who may obstruct a public street.[364] And under a power to suppress bawdy-houses the corporation has by implication and of necessity the power to adopt proper means to accomplish it.[365] So, also, the power to "restrain and prohibit" an act implies power to punish its commission.[366] But the right to impose fines can not exist in conflict with a reasonable interpretation of the charter; and although authority to "prevent" will support an ordinance prohibiting under proper penalties,[367] the general rule that all doubtful grants must be resolved against the corporation has been held to forbid the extension of the power "to abate" nuisances to the enactment of ordinances prescribing a punishment for the maintenance of a nuisance.[368] And where the charter specifically enumerates various powers which the council may render effectual by means of penal prosecutions, it is an implied exclusion of the right to impose penalties in other cases.[369]

[363] Village of Winooski v. Gokey, 49 Vt. 282; Grover v. Huckins, 26 Mich. 476; Mason v. City of Shawneetown, 77 Ill. 533; Korah v. City of Ottawa, 32 Ill. 121; s. c. 83 Am. D. 255; Eyerman v. Blaksley, 78 Mo. 145; City of Independence v. Moore, 32 Mo. 392; Town of Tipton v. Norman, 72 Mo. 380; Hooksett v. Amoskeag &c. Co.. 44 N. H. 105; Mayor &c. v. Yuille, 3 Ala. 137; Trigally v. Mayor &c., 6 Coldw. (Tenn.) 382; City of Shreveport v. Roos, 35 La. An. 1010; State v. Boneil, 42 La. An. 1110; s. c. 8 So. 298; Barter v. Commonwealth, 3 P. & W. (Pa.) 253; Fisher v. Harrisburg, 2 Grant Cas. (Pa.) 291; Mount Pleasant v. Breeze, 11 Iowa 399; Reinhard v. Mayor &c., 2 Daly (N. Y.) 243; Horr & Bemis Munic. Police Ord., § 147. Contra, Farnsworth v. Pawtucket, 13 R. I. 83. Such fines must as a general rule be paid into the treasury of the city, town or other municipal corporation, unless the law specifically directs otherwise: People v. Sacramento, 6 Cal. 422. In the absence of statutory power a municipality can not create offenses by ordinance of a penal nature: City of Owensboro v. Sparks, 18 Ky. L. 269; s. c. 36 S. W. 4.

[364] Toledo &c. R. Co. v. President &c., 43 Ill. 209.

[365] Which included the imposition of a fine: City of Shreveport v. Roos, 35 La. An. 1010. See also, Corporation of Amite City v. Clements, 24 La. An. 27.

[366] State v. Grimes, 49 Minn. 443; s. c. 52 N. W. 42.

[367] City of Centerville v. Miller, 57 Iowa 56; s. c. 10 N. W. 293; Respublica v. Duquet, 2 Yeates (Pa.) 493.

[368] City of Knoxville v. Chicago &c. R. Co., 83 Iowa 636; s. c. 50 N. W. 61.

[369] City of Grand Rapids v. Hughes, 15 Mich. 54, per Cooley, J.; citing Child v. Hudson's Bay Co., 2 P. Wms. 207; State v. Ferguson, 33 N. H. 424.

In order that an ordinance, penal in its nature, may be valid there must be an appropriate and legal penalty.[370] Where the section of an ordinance providing a penalty is void the entire ordinance is a nullity.[371] Where a council is authorized to impose a penalty it must fix the penalty to be imposed and not leave it to the discretion of the trial court.[372] Where the constitution prohibits a penalty fixed by ordinance less than that fixed by the statute the penalty may be fixed greater than the minimum fixed by the statute.[373] Where the statute provides for a penalty, in the discretion of the magistrate, not to exceed a certain sum an ordinance fixing a uniform penalty at that sum is void,[374] and where the statute requires the ordaining of fixed penalties an ordinance fixing the penalty at not less than ten dollars nor more than twenty-five dollars is unauthorized.[375] Where an ordinance is passed mitigating a penalty pending a prosecution under the original ordinance the defendant can not be heard to complain that the penalty under the original ordinance is exorbitant.[376] An ordinance can not create a civil liability for a violation.[377]

§ 547. Mode of enforcement of ordinances—By a purely civil action.—If the manner of enforcing ordinances is prescribed by statute or charter it is a cardinal rule that no other method can be resorted to.[378] In the absence of statutory provisions, at common law the

[370] Tomlin v. City of Cape May, 63 N. J. L. 429; s. c. 44 Atl. 209. Cf. State v. Zeigler, 32 N. J. L. 262; State v. Treasurer &c., 53 N. J. L. 329; s. c. 21 Atl. 304; State v. Cleveland, 3 R. I. 117; State v. Gouldy, 58 N. J. L. 562; s. c. 34 Atl. 748; Massinger v. City of Millville, 63 N. J. L. 123; s. c. 43 Atl. 443.

[371] Massinger v. City of Millville, 63 N. J. L. 123; s. c. 43 Atl. 443.

[372] Young &c. Amuse. Co. v. Atlantic City, 60 N. J. L. 125; s. c. 37 Atl. 444.

[373] City of Owensboro v. Sparks, 18 Ky. L. 269; s. c. 36 S. W. 4.

[374] Massinger v. City of Millville, 63 N. J. L. 123; s. c. 43 Atl. 443.

[375] City of Poughkeepsie v. King, 57 N. Y. S. 116; s. c. 38 App. Div. (N. Y.) 610.

[376] Baker v. City of Lexington, 21 Ky. L. 809; s. c. 53 S. W. 16.

[377] Moran v. Pullman Palace Car Co., 134 Mo. 641; s. c. 36 S. W. 659.

[378] Ewbanks v. President &c., 36 Ill. 177; King v. President &c., 3 Ill. 305; Israel v. President &c., 2 Ill. 290; Weeks v. Forman, 16 N. J. L. 237; Williamson v. Commonwealth, 4 B. Mon. (Ky.) 146; State v. Zeigler, 32 N. J. L. 262; Hart v. Mayor &c., 9 Wend. (N. Y.) 571; Mayor &c. v. Murphy, 40 N. J. L. 145. So, too, where a city council invested by statute with authority to require payment of license fees, and to pass such ordinances as are necessary for that purpose, enacts an ordinance prescribing a penalty for failure to pay a license, it is confined to that mode of enforcement and can not maintain a suit to recover license fees: City Council &c. v. Ashley &c. Co., 34 S. C. 541; s. c. 13 S. E. 845. See also, City of Santa Cruz v. Santa Cruz R. Co., 56 Cal. 143. Upon the question, which has not been ex-

recovery of fines and penalties is by an action of debt or assumpsit, and where these forms have been abolished the remedy is by a civil action of the same nature;[380] and it is competent for the corporation to provide by ordinance for a recovery by an action of debt.[381] The suit should be brought in the name conferred upon the corporation by its charter. Thus, if the "mayor and council of the town," etc., constitute the corporate body, the names of the individual officers should not be set out in the declaration.[382] Several penalties may be included in the declaration and recovered in one suit;[383] but it has been held that when ordinances, though relating to the same subject, are entirely different in the specification of offenses and the amounts of the penalties, each presents a distinct cause of action, and for the enforcement of each a separate suit must be brought.[384] It is not necessary, as in actions on contract, to join all the defendants in

pressly decided, whether the remedy provided by the English municipal corporations act of 1835, by distress and imprisonment for non-payment of fines, precludes the common-law action of debt or assumpsit, see Grant Corp. 364; Rawlison Corp. (5th ed.) 167; Bodwic v. Fennell, 1 Wils. 233; Adley v. Reeves, 2 Mau. & S. 53, 61.

[380] Ewbanks v. President &c., 36 Ill. 177; State v. Treasurer &c., 53 N. J. L. 329; s. c. 21 Atl. 304; State v. Passaic, 42 N. J. L. 429; Israel v. President &c., 2 Ill. 290; Coates v. Mayor &c., 7 Cow. (N. Y.) 585; Corporation of Columbia v. Harrison, 2 Treadw. Const. (S. C.) 213, 215; Heeney v. Sprague, 11 R. I. 456; Town of Brookville v. Gagle, 73 Ind. 177; City of Monett v. Beatty, 79 Mo. App. 315; City of Lead v. Klatt, 13 S. D. 140; s. c. 82 N. W. 391; City of Cassville v. Jimerson, 75 Mo. App. 426; Walton v. City of Canon City, 13 Colo. App. 77; s. c. 56 Pac. 671. Where the charter prescribes that it shall be sufficient to declare generally in debt, it is not necessary to file a written declaration in the common-law form: Deitz v. City of Central, 1 Colo. 323, holding also, that in such an action a verdict of guilty is substantially responsive to the issue.

[381] Barter v. Commonwealth, 3 P. & W. (Pa.) 253; Hesketh v. Braddock, 3 Burr. 1847, 1858. See also, State v. Inhabitants &c., 45 N. J. L. 318. But not by distress and sale of goods: Willcock Munic. Corp. 164-181; Adley v. Reeves, 2 Mau. & S. 53, 60; 2 Wheat. Selw. Nisi Prius 1178.

[382] Powers v. Mayor &c., 54 Ala. 214. See also, Charleston v. Oliver, 16 S. C. 47; Williamson v. Commonwealth, 4 B. Mon. (Ky.) 146; State v. Treasurer &c., 45 N. J. L. 288; Graves v. Colby, 9 Ad. & El. 356; Master of Vintner's Co. v. Passey, 1 Burr. 235. The suit for the violation of an ordinance should be in the name of the city and not the state: State v. Faber, 50 La. An. 952; s. c. 24 So. 662. Suits for violation of ordinances in Washington are brought in name of the state under the constitution: State v. Fountain, 14 Wash. 236; s. c. 44 Pac. 270.

[383] City of Brooklyn v. Cleves, 1 Hill & D. (N. Y.) 231. But that it is not necessary to join them, see Whitehall v. Meaux, 8 Ill. App. 182.

[384] Kensington v. Glenat, 1 Phila. (Pa.) 393.

interest. The cause of action is assimilated to a case of tort, in which one or more of the offending parties may be sued.[385]

§ **548. Jurisdiction of proceedings.**—If a special tribunal is provided by law for the trial of proceedings based upon municipal ordinances, as is usually the case in this country, that tribunal has exclusive jurisdiction unless the legislature has plainly indicated an intention to the contrary,[386] and the corporation can not by ordinance create a court or confer upon it a jurisdiction not expressly authorized by statute or charter.[387] Of course, the charter itself can not give power to a judicial officer not recognized by the organic law; but where the latter vested all judicial authority in certain courts, including justices of the peace, and a charter provided for the election of a justice of the peace, "to be denominated police judge," and defined his jurisdiction, it was held that although the title was unwarranted he was lawfully possessed of the powers of a justice of the peace.[388] The invalidity of an ordinance is not an objection that goes to the jurisdiction of the court.[389] And it is also well settled that a magistrate's personal interest in a fine from the fact that he is a citizen of the municipality to which it is payable is too remote to disqualify him to try the action.[390] An objection to the jurisdiction on account of defects in the process should be made at the earliest moment; it comes too late if made for the first time on appeal.[391]

§ **549. Imprisonment in default of payment of fine.**—We have seen that the power to impose pecuniary penalties is deemed a necessary adjunct to the power to enact ordinances unless restrained expressly

[385] President &c. v. Holland, 19 Ill. 271.

[386] Horr & Bemis Munic. Police Ord., § 166. In the same section it is said that "remedies under ordinances will, however, never be allowed to fail for want of a tribunal, and if no special tribunal is provided, actions to enforce penalties may be brought in the established courts of the state;" citing Corporation of Columbia v. Harrison, 2 Treadw. Const. (S. C.) 213.

[387] State v. Inhabitants &c., 45 N. J. L. 318; Deel v. City of Pittsburgh, 3 Watts (Pa.) 363; Barter v. Commonwealth, 3 P. & W. (Pa.) 253.

[388] Deitz v. City of Central, 1 Colo. 323.

[389] Woodruff v. Stewart, 63 Ala. 206, 208.

[390] Deitz v. City of Central, 1 Colo. 323; Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Mayor &c. v. McKee, 2 Yerg. (Tenn.) 167; Thomas v. Town of Mt. Vernon, 9 Ohio 290; City Council v. Pepper, 1 Rich. L. (S. C.) 364; Queen v. Milledge, L. R. 4 Q. B. D. 332; Queen v. Justices, L. R. 4 Q. B. D. 522. It was formerly held otherwise in England: Hesketh v. Braddock, 3 Burr. 1847.

[391] Tisdale v. President &c., 46 Ill. 9. See also, Wiggins v. City of Chicago, 68 Ill. 372.

or by fair implication, and that their collection may be enforced by an action of debt or assumpsit or an equivalent civil remedy. But as this sanction would be futile against impecunious offenders, it is generally provided that imprisonment may be inflicted in default of payment of the fine and the costs of prosecution.[392] Only express and precise authority will justify such imprisonment.[393] Payment of fines can not be coerced in that manner under a power to fine or imprison;[394] but where a charter conferred the power to enact ordinances with penalties, and provided that upon conviction for a breach thereof and failure to pay the fine the offender might be placed at labor for the city, it was held that an ordinance requiring payment of a license tax on certain occupations might lawfully annex a fine for violation of its provisions, which might be enforced in the same manner as any other ordinance.[395] In all cases the terms of the judgment must be in exact conformity with the language of the statute or charter relating to the penalty. Under authority to commit to the county jail a commitment to any other prison is void.[396] So, where the statute provided that imprisonments should not exceed six months, a judgment that the defendant should be confined in jail until such time as would at a certain rate per day make the amount of the fine and costs was pronounced invalid.[397]

[392] The costs are no part of the penalty and are not computed in determining whether the jurisdictional amount has been exceeded: State v. Herdt, 40 N. J. L. 264. And the authority to imprison for non-payment of fine includes the costs: Horr & Bemis Munic. Police Ord., § 203. Contra, State v. Cantieny, 34 Minn. 1; s. c. 24 N. W. 458. A penalty accruing from a breach of an ordinance of a municipal corporation is not a debt within the meaning of a constitutional provision which forbids imprisonment for debt: Hardenbrook v. Town of Ligonier, 95 Ind. 70; citing McCool v. State, 23 Ind. 127; Lower v. Wallick, 25 Ind. 68; Turner v. Wilson, 49 Ind. 581; McIlvain v. State, 87 Ind. 602; Lane Co. v. Oregon, 7 Wall. 71; Dunlop v. Keith, 1 Leigh (Va.) 430; Caldwell v. State, 55 Ala. 133; Hibbard v. Clark, 56 N. H. 155; City of Camden v. Allen, 26 N. J. L. 398; Flora v. Sachs, 64 Ind. 155. Cf. Ex parte Reed, 4 Cranch C. C. 582; City of Philadelphia v. Duncan, 4 Phila. (Pa.) 145; Hall v. Corporation of Washington, 4 Cranch 722.

[393] Brieswick v. Mayor &c., 51 Ga. 639; City of Burlington v. Kellar, 18 Iowa 59; City of London's Case, 8 Coke 241; Clark's Case, 5 Coke 319.

[394] Brieswick v. Mayor &c., 51 Ga. 639. Cf. Ex parte Green, 94 Cal. 387; s. c. 29 Pac. 783, where it was held by a divided court that under a power to impose a fine or imprisonment, or both, a fine and imprisonment, and imprisonment in default of payment of the fine, might be imposed in one sentence.

[395] Ex parte City Council of Montgomery, 64 Ala. 463.

[396] Merkee v. City of Rochester, 13 Hun (N. Y.) 157.

[397] Kanouse v. Town of Lexington, 12 Ill. App. 318. The court said:—"It does not appear from the record

§ **550. Imprisonment as a penalty.**—The right to inflict imprisonment as a penalty for a violation of an ordinance must be given by charter or statute, otherwise no such penalty can be legally annexed or enforced. The rule is that they can only be enforced by a pecuniary penalty unless there is some express act giving power to inflict other punishment.[398] The power to imprison must be strictly construed. In a Colorado case it appeared that a city charter gave the council power to enforce ordinances "by a proper fine, imprisonment, or other penalties." The question at issue was whether this provision would sanction a fine and imprisonment. The conclusion that it would not was based on the following argument: "If the words 'other penalties' were omitted, a single offense could be punished by either fine or imprisonment, but not by both fine and imprisonment. Therefore, if the council had power to provide for 'fine or imprisonment,' such power must be conferred by the words 'other penalties.' But this language was in our judgment employed in contradistinction to 'fines and imprisonments.' The expression is, 'or other penalties,'—that is, penalties other than fines or imprisonments. To say that the phrase 'other penalties' may in a given case include 'fine and imprisonment,' together, whereas it could not include either fine or imprisonment separately, would be at least paradoxical. * * * The 'other penalties' referred to are penalties that do not include either of the two previously designated, such as revocation of licenses, forfeitures, distress and sale, and the like."[399] Before the power to imprison can be exercised there must be an appropriate by-law and a trial and judicial ascertainment that such by-law has been violated.[400]

§ **551. Forfeitures.**—A municipal corporation can not impose a forfeiture of property without express authority. Such an extraordinary

what amount of costs was taxed in this case, but it is argued by counsel that when the fine and costs are added together they could not be discharged in six months at the rate [prescribed by law]. It is enough to say that such might be the effect, and if so the defendant at the end of six months would be driven to another proceeding in order to obtain his discharge. We are of opinion the judgment should have limited the imprisonment to six months, so that when that period should have arrived the keeper of the prison would have discharged the prisoner at once." See also, In re Greystock, 12 Up. Can. Q. B. 458; Queen v. Gilbert, 2 Pug. & B. 619; Ex parte Trask, 1 Pug. & B. 277.

[398] City of Burlington v. Kellar, 18 Iowa 59; City of Kinmundy v. Mahan, 72 Ill. 462; State v. Ruff, 30 La. An. 497. See also, Clerk v. Tucket, 3 Lev. 281; s. c. 2 Vent. 182; Adley v. Reeves, 2 Mau. & S. 53, 60; Lee v. Wallis, 1 Kenyon 292, 295.

[399] McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516, 521.

[400] Ex parte Burnett, 30 Ala. 461.

power can not be exercised under the general power to make by-laws.[401] Where the only penalties which a town council was authorized to impose for violation of ordinances were fines not exceeding $50, an ordinance declaring that any retailer who should sell or give any spirituous liquors to a slave without a written permit should forfeit his license was held to be void. A distinction was urged by counsel between the forfeiture of a license and the forfeiture of goods and chattels, but the court replied that the oppression and hardship of a forfeiture does not depend on the nature but the value of the thing forfeited. "It may be better for the retailer," said Frost, J., "to have his stock in trade forfeited than his license to retail. * * * If the town council can forfeit it for the offense of selling spirits to a slave, they may declare it forfeited for any other offense; and thus convert a license to retail into a recognizance of the retailer for the observance of all their by-laws."[402]

[401] Taylor v. City of Carondelet, 22 Mo. 105. In Kirk v. Nowill, 1 T. R. 118, 124, Lord Mansfield held that such a power must be expressly given, as otherwise it was against Magna Charta; and Mr. Justice Buller also held the ordinance creating a forfeiture to be bad for the additional reason that the act of parliament had prescribed in what manner by-laws should be enforced, namely, by fine or amercement, and that therefore the corporation was precluded from inflicting any other punishment. This case has been cited by subsequent elementary writers as establishing both these positions: 2 Kyd Corp. 110; Willcock Munic. Corp. 180, pl. 449; Angell & Ames Corp., § 360. See also, Hart v. Mayor &c., 9 Wend. (N. Y.) 571; Clerk v. Tucket, 3 Lev. 281; s. c. 2 Vent. 182; Lee v. Wallis, 1 Kenyon 292, 295; Phillips v. Allen, 41 Pa. St. 481; State v. Town Council, 6 Rich. L. (S. C.) 404; Rosebaugh v. Saffin, 10 Ohio 31; Cotter v. Doty, 5 Ohio 394; Kneedler v. Borough of Norristown, 100 Pa. St. 368; White v. Tallman, 26 N. J. L. 67; Bergen v. Clarkson, 6 N. J. L. 428; Slessman v. Crozier, 80 Ind. 487; Town of New Hampton v. Conroy, 56 Iowa 498; s. c. 9 N. W. 417; Henke v. McCord, 55 Iowa 378; s. c. 7 N. W. 623; Varden v. Mount, 78 Ky. 86; Mayor &c. v. Odrenan, 12 Johns. (N. Y.) 122; Dunham v. Trustees &c., 5 Cow. (N. Y.) 462; Mayor &c. v. Yuille, 3 Ala. 137; City of Cincinnati v. Buckingham, 10 Ohio 257; Wilcox v. Hemming, 58 Wis. 144; s. c. 15 N. W. 435; Donovan v. Mayor &c., 29 Miss. 247. But an ordinance imposing a pecuniary penalty and also a forfeiture may be good as to the penalty and void as to the forfeiture: Kneedler v. Borough of Norristown, 100 Pa. St. 368.

[402] State v. Town Council, 6 Rich. L. (S. C.) 404, 415, 417. See also, Ridgeway v. West, 60 Ind. 371; State v. Inhabitants &c., 44 N. J. L. 610. An ordinance providing that upon a second conviction for violation of a Sunday closing of tippling-houses law the defendant's license and the money paid therefor shall be forfeited and remain forfeited, though upon appeal and trial de novo he is acquitted, is void for unreasonableness: McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516.

§ 552. The same subject continued.—When the power to denounce a forfeiture of property is clear it must not be exercised in contravention of constitutional provisions looking to the security of property from condemnation without "due process of law." Most of the cases in which the validity of ordinances in this particular has been discussed were those enacted for the impounding and sale of animals running at large. "The cases agree," said Judge Dillon, "that when the power to denounce the forfeiture against such animals is given there should be notice either actual or constructive, or prior legal proceedings."[403] But this alternative requirement has afforded ground for much contention among the courts. The law was laid down by the supreme court of Kansas as follows: "Where the law or an ordinance provides that the owner of the cattle shall, in addition to the cost of taking them up, impounding and keeping them, pay for the damages that they may do to private individuals while unlawfully running at large, the question of damages and the amount thereof can be determined only by judicial investigation, and generally in a suit between the parties interested.[404] And it will also be admitted that where fines or forfeitures, or anything of a penal or criminal nature or character, is imposed, the question of whether the owner of the stock is liable for the same can only be determined by judicial investigation.[405] But when nothing is attempted to be imposed upon the owner of the stock as damages or penalty, but only the reasonable cost of taking up, impounding and keeping the same, and sufficient notice is provided for, and the ordinance is authorized by the city charter, it is believed that no court has ever held the law, or the ordinance founded thereon, to be unconstitutional or invalid, although there may be no provision for a judicial investigation, except the general remedies to determine whether the law or the ordinance has been complied with, and although the notice provided for may not be a personal notice, but only a notice by publication or by posting."[406] But the court of appeals of Kentucky declare that a judicial investigation is essential to the validity of such proceedings. "The constitution provides that the citizen shall not be deprived of

[403] 1 Dillon Munic. Corp., § 348.

[404] Bullock v. Geomble, 45 Ill. 218.

[405] Poppen v. Holmes, 44 Ill. 360; Willis v. Legris, 45 Ill. 289.

[406] Gilchrist v. Schmidling, 12 Kan. 263, 272; quoted and approved in Fort Smith v. Dodson, 46 Ark. 296. See also, Whitfield v. Longest, 6 Ired. L. (N. C.) 268; Wilcox v. Hemming, 58 Wis. 144; s. c. 15 N. W. 435; Gosselink v. Campbell, 4 Iowa 296; McKibbin v. Fort Scott, 35 Ark. 352; Hellen v. Noe, 3 Ired. L. (N. C.) 493; McKee v. McKee, 8 B. Mon. (Ky.) 433; Shaw v. Kennedy, N. C. Term R. 158; Davies v. Morgan, 1 C. & J. 587; Grover v. Huckins, 26 Mich. 476; Campau v. Langley, 39 Mich. 451; Moore v. State, 11 Lea (Tenn.) 35; Mayor &c. v. Lanham, 67 Ga. 753.

his property except by the law of the land. The meaning of the provision has generally been construed a law that hears before condemning and arrives at a judgment for the divestiture of the rights of property through what is ordinarily understood to be judicial process —general rules that govern society in reference to the rights of property. This is the general rule, and it is only in extreme cases, when the preservation and repose of society or the protection of the property rights of a large class of the community absolutely require a departure, that the courts recognize any exception. When, for instance, it becomes necessary to destroy private property to prevent the spread of fire or pestilence in a city or the advance of an army, the rule is silent, bending to an overwhelming necessity." The court insists that the right to proceed without citation and without hearing should not be extended beyond the impounding of the animals. "When that is done the necessity for summary and precipitate action ceases and judicial proceedings looking to a forfeiture may then properly begin."[407]

§ 553. Cumulative fines and fines for continuous and repeated offenses.—A municipal corporation having power to enforce ordinances by fines may distinguish between a first and second offense, and mark that distinction by a graduation of the penalty, provided the penalty in no case exceeds that authorized to be imposed.[408] Where the acts are distinct repetitions of an offense and not merely a continuation of a misconduct which may be treated as an entirety the full penalty may be inflicted in each case. Unlawful sales of liquor on the same day may, for instance, be punishable separately.[409] But where a person was charged in one complaint with one hundred violations of an ordinance "prohibiting any person from cutting down and making use of cedar and other trees," it was held to set forth only a single offense.[410] It was also held that an ordinance imposing a fine of $125 on each hundred pounds of gunpowder kept in store, the limit of power to punish being $250, could not be enforced beyond the limit.[411] So, too, an ordinance prescribing a penalty "of not less

[407] Varden v. Mount, 78 Ky. 86, and cases there cited. See also, in favor of this view, Lanfear v. Mayor, 4 La. 97 (cf. Guillotte v. City of New Orleans, 12 La. An. 432); Cincinnati v. Buckingham, 10 Ohio 257.

[408] State v. Inhabitants &c., 45 N. J. L. 318; citing Master of Butchers' Co. v. Bullock, 3 Bos. & Pul. 434.

[409] Corporation of Columbia v. Harrison, 2 Treadw. Const. (S. C.) 213, 215; State v. Town Council &c., 6 Rich. (S. C.) 404.

[410] State v. Town Council &c., Rice (S. C.) 158.

[411] Mayor &c. v. Odrenan, 12 Johns. (N. Y.) 122. The court remarked that if a contrary construction were to prevail a penalty to the full amount might be repeated, not upon the offense itself but upon the quantity of the offense, and that with

than one dollar nor more than five dollars for every hour" that a person shall keep his wagon within the limits of a market without the authority of the clerk of the market is in violation of a statute conferring power to pass reasonable by-laws with penalties not exceeding $20 for one offense.[412]

§ 554. Enforcement by complaint—Nature of the proceeding.—There is great confusion among the authorities as to the rules of procedure and evidence applicable to the prosecution of offenders against municipal ordinances by complaint. The decisions are influenced in a great measure, but not wholly, by local statutory or constitutional provisions.[413] By the code of Wyoming civil procedure in all such actions is expressly enjoined.[414] Substantially the same rule has been judicially adopted in some other states, while in many jurisdictions they are deemed to possess in whole or in part the characteristics of criminal prosecutions. A summary of the doctrine in various states is given in a recent and much-quoted treatise, and the authorities there cited will be found in the note.[415]

equal propriety the penalty might be imposed on every pound or on every grain. See also, City of Chicago v. Quimby, 38 Ill. 274; Hart v. Mayor &c., 9 Wend. (N. Y.) 571; Stokes v. Corporation of New York, 14 Wend. (N. Y.) 87; Marshall v. Smith, L. R. 8 C. P. 416; Zylstra v. Corporation of Charleston, 1 Bay (S. C.) 382; Crepps v. Durden, Cowp. 640.

[412] "The offense thus punished is a single continuous offense, and the ordinance affixing a penalty which, computed according to its terms, may exceed $20 for a single offense upon one and the same day is void:" Commonwealth v. Wilkins, 121 Mass. 356. Cf. Horr & Bemis Munic. Police Ord., § 152.

[413] These must be strictly followed so far as they go: People v. President &c., 32 Hun (N. Y.) 508. And generally the case is controlled by the procedure which obtains in similar cases before the same tribunal: People v. Cox, 76 N. Y. 47; State v. City of Passaic, 42 N. J. L. 87.

[414] Jenkins v. City of Cheyenne, 1 Wyom. Ter. 287.

[415] Horr & Bemis Munic. Police Ord., § 170. Alabama: — Stricter rules than in civil cases: Mayor &c. v. Jones, 42 Ala. 630; Fuhrman v. Mayor &c., 54 Ala. 263. California:—Criminal: City of Santa Barbara v. Sherman, 61 Cal. 57; People v. Johnson, 30 Cal. 98. Colorado:—For the rule in Colorado, see the succeeding section. Georgia: — Not criminal: Williams v. City Council &c., 4 Ga. 509; Floyd v. Commissioners &c., 14 Ga. 354. Illinois:—Not criminal: City of Quincy v. Ballance, 30 Ill. 185; President &c. v. Holland, 19 Ill. 271; Town of Lewiston v. Proctor, 23 Ill. 483. Indiana:—Not criminal: Town of Brookville v. Gagle, 73 Ind. 177; Quigley v. City of Aurora, 50 Ind. 28; City of Greensburgh v. Corwin, 58 Ind. 518; City of Goshen v. Croxton, 34 Ind. 239; Board &c. v. Chissom, 7 Ind. 688; Miller v. O'Reilly, 84 Ind. 168. Iowa:—Not criminal: City of Davenport v. Bird, 34 Iowa 524. Kansas:—In some cases civil, in others criminal: Neitzel v. City of Concordia, 14 Kan. 446. Cf. City of Emporia v. Volmer, 12 Kan.

§ 555. The complaint—General requisites.—At common law no trial for any offense except contempts could ever be had without a written complaint.[416] It is a part of the technical meaning of the term "complaint" that it is verified by the oath or affirmation of the person who informs.[417] The complaint ought regularly to be entitled in behalf of the proper party, which in most cases is the corporation;[418] but mere irregularities not affecting any substantial right of the defendant, and where the record of the proceedings is sufficiently full and specific to protect him against another prosecution for the same offense, will be disregarded.[419] There must be a distinct allegation

622. Massachusetts: — Criminal: Commonwealth v. Worcester, 3 Pick. (Mass.) 462; In re Goddard, 16 Pick. (Mass.) 504. Michigan:—Not criminal: Cooper v. People, 41 Mich. 403; s. c. 2 N. W. 51; People v. Controller &c., 18 Mich. 445. Minnesota:—Not criminal: State v. Lee, 29 Minn. 445; s. c. 13 N. W. 913. Missouri:—Not criminal: City of St. Louis v. Vert, 84 Mo. 204; Ex parte Hollwedell, 74 Mo. 395; Ex parte Kilburg, 10 Mo. App. 442. Nebraska: — Criminal: City of Brownville v. Cook, 4 Neb. 101. New Hampshire: — Criminal: State v. Stearns, 31 N. H. 106. New Jersey:—Not criminal: Brophy v. City of Perth Amboy, 44 N. J. L. 217; Kip v. Mayor &c., 26 N. J. L. 298; Keeler v. Milledge, 24 N. J. L. 142. New York: — Not criminal: Wood v. City of Brooklyn, 14 Barb. (N. Y.) 425, 431. See also, City of Buffalo v. Schliefer, 25 Hun (N. Y.) 275. Ohio:—In some cases civil, in others criminal: City of Cincinnati v. Gwynne, 10 Ohio 192; Markle v. Town Council &c., 14 Ohio 586. See also, Larney v. City of Cleveland, 34 Ohio St. 599. Wisconsin:—The rule is now nearly or quite the same as that in Colorado (see the following section): President &c. v. McKernan, 54 Wis. 487; s. c. 11 N. W. 798; President &c. v. Bell, 43 Wis. 488; Fink v. City of Milwaukee, 17 Wis. 26; City of Oshkosh v. Schwartz, 55 Wis. 483; s. c. 13 N. W. 533; Sutton v. McConnell, 46 Wis. 269; s. c. 50 N. W. 414; Chafin v. Waukesha Co., 62 Wis. 463; s. c. 24 N. W. 732.

[416] 4 Bl. Com. 280; Barbour Cr. Law 614; 1 Bishop Crim. Proc., § 894: Chitty Cr. Law 34; Archbold Cr. Prac. & Pl. 31, n. 1; Allen v. Gray, 11 Conn. 95, 102; Tracy v. Williams, 4 Conn. 107; Prell v. McDonald, 7 Kan. 426; Campbell v. Thompson, 16 Me. 117. On appeal, city ordinances will not be presumed to require a written complaint: City of Alton v. Kirsch, 68 Ill. 261.

[417] Campbell v. Thompson, 16 Maine 117, 120. A slight error in the jurat will not vitiate the affidavit: City of Cherokee v. Fox, 34 Kan. 16; s. c. 7 Pac. 625. If the charter requires an information by the city attorney, a complaint made by a deputy, though afterwards adopted by him, is not sufficient: City of Kansas v. Flanagan, 69 Mo. 22.

[418] Williamson v. Commonwealth, 4 B. Mon. (Ky.) 146; Smith v. Marston, 5 Tex. 426; Webster v. City of Lansing, 47 Mich. 192; s. c. 10 N. E. 196. Any form of complaint in this respect which is prescribed by statute must be strictly obeyed: State v. Zeigler, 32 N. J. L. 262; State v. Bartlett, 35 Wis. 287; Exeter v. Starre, 2 Show. 158; Harris v. Wakeman, Say. 254; Commonwealth v. Fahey, 5 Cush. (Mass.) 408.

[419] State v. Graffmuller, 26 Minn. 6; s. c. 46 N. W. 445; Farrel v. Mayor &c., 12 Up. Can. Q. B. 343; State v. Treasurer &c., 45 N. J. L. 288; City

of the offense,[420] a reference to the ordinance violated, and a conclusion.[420a]

§ 556. **The same subject continued—Pleading.**—The precision required in common-law informations or indictments is not required in affidavits for violation of municipal ordinances. "It is sufficient if they set out with clearness the offense charged, and the substance of that part of the ordinance which has been violated, with a reference to the title, the date and the section."[421] It is generally held sufficient to set out the substance of the ordinance or the section of it which is alleged to have been violated.[422] But a simple charge of

of Alton v. Kirsch, 68 Ill. 261; State v. King, 37 Iowa 462.

[420] Roberson v. Lambertville, 38 N. J. L. 69; Horr & Bemis Munic. Police Ord., § 173.

[420a] See the following two sections.

[421] Keeler v. Milledge, 24 N. J. L. 142, 145. Continuing, the court said: —"This much, however, it ought to contain, for the office of the complaint is not only to give the magistrate jurisdiction, but eventually to apprise the party of what offense he is charged with, and it answers neither of these purposes with certainty unless it contains these particulars. I am inclined to think this complaint is defective, inasmuch as it does not give the date and the section of the ordinance alleged to have been violated; but as it refers to the ordinance relating to markets, and gives the literal words of the section, and as there is no pretense that the defendant was surprised, I should have some hesitation in reversing for this cause alone." See also, Inhabitants &c. v. O'Connor, 53 Mo. 468; Commonwealth v. Rowe, 141 Mass. 79; s. c. 6 N. E. 645; State v. Dunbar, 43 La. An. 836; s. c. 9 So. 492; State v. Baker, 44 La. An. 79; s. c. 10 So. 405; City Council &c. v. Ashley Phosphate Co., 34 S. C. 541; s. c. 13 S. E. 845.

[422] Kip v. Mayor &c., 26 N. J. L. 298; Goldthwaite v. City Council &c., 50 Ala. 486; Case v. Mayor &c., 30 Ala. 538; City Council &c. v. Chur, 2 Bailey (S. C.) 164; Clevenger v. Town of Rushville, 90 Ind. 258; City Council &c. v. Milwaukee &c. R. Co., 7 Wis. 484; People v. Justices, 12 Hun (N. Y.) 65; City Council v. Seeba, 4 Strobh. L. (S. C.) 319; O'Malia v. Wentworth, 65 Maine 129. In Ex parte Lane, 76 Cal. 587; s. c. 18 Pac. 677, a description of the offense, and a reference to the section of the ordinance, were held insufficient. See also, to the same point, City of Faribault v. Wilson, 34 Minn. 254; s. c. 25 N. W. 449; Town of Auburn v. Eldridge, 77 Ind. 126; City of Huntington v. Pease, 56 Ind. 305; City of Goshen v. Kern, 63 Ind. 468; Whitson v. City of Franklin, 34 Ind. 392; West v. City of Columbus, 20 Kan. 633; State v. Merritt, 83 N. C. 677; State v. Cainan, 94 N. C. 880. In some cases it has been held unnecessary to refer to the ordinance: City of Rochester v. Upman, 19 Minn. 108; State v. Reckards, 21 Minn. 47; City of Oshkosh v. Schwartz, 55 Wis. 483; s. c. 13 N. W. 552. See also, Information of Oliver, 21 S. C. 318; and contra, City of Winona v. Burke, 23 Minn. 254; Inhabitants &c. v. Inhabitants &c., 47 Maine 481. But the prevailing rule is that the courts will take judicial notice of the charter, and the power to make by-laws, but not of the by-laws themselves: Case v. Mayor &c., 30 Ala. 538; Goodrich v.

violating an ordinance by a mere recital of the number of the section is insufficient.[423] The complaint should state briefly but clearly the acts done or omitted to be done which constitute a violation of the ordinance, together with the time when and place where the offense was committed.[424] The general rule undoubtedly is that it is sufficient to describe the offense in the language of the ordinance;[425] but where the words of the ordinance by their generality embrace within their literal terms cases which are not within their equity and spirit or the obvious intention of the framers, the rules of good pleading require all the circumstances and ingredients of the offense to be set out.[426]

§ **557. Pleading further considered.**—While some latitude must be allowed in the construction of complaints charging violations of ordinances, all the common safeguards and requirements of criminal pleading ought not to be disregarded. A complaint for wilfully refusing, as the agent of a water company, to supply the complainant with water, a tender being made in actual money for that purpose,

Brown, 30 Iowa 291; Garvin v. Wells, 8 Iowa 286 (cf. Conboy v. Iowa City, 2 Iowa 90); Trustees &c. v. Lefler, 23 Ill. 88, 90; Harker v. Mayor, 17 Wend. (N. Y.) 199; People v. Mayor &c., 7 How. Pr. (N. Y.) 81; Mooney v. Kennett, 19 Mo. 551; Cox v. City of St. Louis, 11 Mo. 431; City of Austin v. Walton, 68 Tex. 507; s. c. 5 S. W. 70; City of New Orleans v. Boudro, 14 La. An. 303; City of Miles City v. Kern, 12 Mont. 119; s. c. 29 Pac. 720; People v. Buchanan, 1 Idaho 681; Green v. City of Indianapolis, 22 Ind. 192; Wheeling v. Black, 25 W. Va. 266; Garland v. City of Denver, 11 Colo. 534; s. c. 19 Pac. 460. In Town of Moundsville v. Velton, 35 W. Va. 217; s. c. 13 S. E. 373, it is said to be "well settled" that the courts of the municipality will take judicial notice of its ordinances without pleading or proof,—citing Dillon Munic. Corp., § 413, and Wheeling v. Black, 25 W. Va. 266. But cf. Horr & Bemis Munic. Police Ord., § 174, and Bishop Stat. Crimes (2d ed.), § 106, and cases cited; Downing v. City of Miltonvale, 36 Kan. 740; s. c. 14 Pac. 281.

[423] City of Huntington v. Pease, 56 Ind. 305; City of Huntington v. Cheesbro, 57 Ind. 74.

[424] City of Huntington v. Pease, 56 Ind., 305; Inhabitants &c. v. O'Connor, 53 Mo. 468; Lippman v. City of South Bend, 84 Ind. 276; City of St. Louis v. Fitz, 53 Mo. 582.

[425] City of St. Louis v. Knox, 74 Mo. 79; State v. Carpenter, 60 Conn. 97; Commonwealth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146.

[426] State v. Goulding, 44 N. H. 284; State v. Beirce, 27 Conn. 319; Commonwealth v. Stark, 2 Cush. (Mass.) 556; Rex v. Horne, 2 Cowp. 672, 682; State v. Follet, 6 N. H. 53; 2 Hawk. P. C., ch. 25, §§ 111, 115; 3 Bac. Abr. 113; State v. Robinson, 29 N. H. 274; Rex v. Mason, 2 T. R. 581; Davey v. Baker, 4 Burr. 2471; Rex v. Sparling, 1 Str. 497; Anthony v. State, 29 Ala. 27; State v. Fleetwood, 16 Mo. 448; Horr & Bemis Munic. Police Ord., § 173. "A complaint properly concludes against the form of the statute:" State v. Cruickshank, 71 Vt. 94; s. c. 42 Atl. 983.

which does not state that the water company was under a legal obligation by ordinance to supply such water, and does not in express words or by fair implication allege that the tender was sufficient or was the amount of the legal or contract price of the water supply desired, is bad and should be quashed on motion.[427] But a general allegation that an ordinance has been duly passed is sufficient without alleging that every antecedent act requisite to its legal passage has been done;[428] or that the officers were duly elected and authorized to pass the ordinance.[429] As a general rule exceptions need not be negatived.[430] If an offense be cumulative with respect to the acts done, although any one of the acts be sufficient to constitute the offense, the cumulative offense may be charged without making the pleading bad for duplicity.[431] A complaint for allowing swine to go upon the sidewalk is not objectionable in describing a continuous street by the names of its different parts.[432] Where the complaint is brought in the name of the corporation, it is proper to conclude "contrary to the form of the ordinance," etc;[433] but when it is required to be prosecuted in the name of the state, it ought to conclude "contrary to the statute," or to both statute and ordinance.[434]

§ **558. Proof of ordinances.**—The method of proving ordinances is frequently provided for by statute;[435] but where the matter is not thus regulated, the common-law rule requires the production of the

[427] Johnson v. City of Winfield, 48 Kan. 129; s. c. 29 Pac. 559.

[428] Becker v. City of Washington, 94 Mo. 375; s. c. 7 S. W. 291. See also, Board &c. v. Henzler (N. J.), 41 Atl. 228; Town of Flora v. Lee, 5 Ill. App. 629.

[429] Hardenbrook v. Town of Ligonier, 95 Ind. 70. See also, Village of Winooski v. Gokey, 49 Vt. 282; City of Janesville v. Milwaukee &c. R. Co., 7 Wis. 484. Cf. Commissioners &c. v. Frank, 1 Jones L. (N. C.) 436.

[430] McGear v. Woodruff, 33 N. J. L. 213; Lynch v. People, 16 Mich. 472; Town of Martinsville v. Frieze, 33 Ind. 507.

[431] Commonwealth v. Curtis, 9 Allen (Mass.) 266, 268; State v. Haney, 2 Dev. & B. (N. C.) 390, 403. See also, Reg. v. Bowen, 1 Denison 23; Stevens v. Commonwealth, 6 Met. (Mass.) 241; State v. Morton, 27 Vt. 310; Hinkle v. Commonwealth, 4 Dana (Ky.) 518.

[432] Commonwealth v. Curtis, 9 Allen (Mass.) 266, 268.

[433] Village of Winooski v. Gokey, 49 Vt. 282.

[434] Horr & Bemis Munic. Police Ord., § 176. In a prosecution for violation of an ordinance under a statute providing that "it shall be sufficient to set forth the offense fully, plainly, substantially and formally, and no part of such ordinance need be set forth," a conclusion "against the revised ordinances of said city in such case made and provided," is sufficient to embrace an amendment to a section included in a volume entitled "Revised Ordinances:" Commonwealth v. Odenweller, 156 Mass. 234; s. c. 30 N. E. 1022.

[435] Napman v. People, 19 Mich. 352; City of St. Louis v. St. Louis R. Co., 89 Mo. 44; s. c. 1 S. W. 305. See also, Downing v. City of Miltonvale, 36 Kan. 740; s. c. 14 Pac. 281.

originals or the books in which they are recorded.[436] If the regular enactment of the ordinance is not questioned, it is not necessary to show that fact in addition to its production to sustain a conviction.[437] But where it becomes necessary to prove a compliance with all formalities, none must be omitted which are requisite to its validity.[438] A

[436] Chicago &c. R. Co. v. Engle, 76 Ill. 317; City Council v. Dunn, 1 McC. (S. C.) 333; Fitch v. Pinckard, 5 Ill. 69; Prell v. McDonald, 7 Kan. 426; State v. King, 37 Iowa 462; Barr v. Village of Auburn, 89 Ill. 361; Lindsay v. City of Chicago, 115 Ill. 120; s. c. 3 N. E. 443; City of Independence v. Trouvalle, 15 Kan. 70. As to attestation and identification of the book, see Town of Tipton v. Norman, 72 Mo. 380; City of Ottumwa v. Schaub, 52 Iowa 515; s. c. 3 N. W. 529. Where there is no record the original or a certified copy is admissible: Pugh v. City of Little Rock, 35 Ark. 75; Bailey v. State, 30 Neb. 855; s. c. 47 N. W. 208; Kinghorn v. Corporation &c. of Kingston, 26 Up. Can. Q. B. 130; Block v. President &c., 36 Ill. 301. An ordinance purporting to have been passed by the city council and coming from the city secretary, who is the custodian, is admissible, although there is an interlineation therein: Hutchison v. Storrie (Tex. Civ. App.), 48 S. W. 785. The clerk's certificate reciting that the document was a true and correct copy of an ordinance passed by the council and deposited in his office is prima facie proof of its passage: McChesney v. City of Chicago, 159 Ill. 223; s. c. 42 N. E. 894. Where the charter provides that the ordinances published in book form shall be received in evidence without further proof, an ordinance so published will be presumed to have been signed by the mayor: Allen v. City of Davenport, 107 Iowa 90; s. c. 77 N. W. 532. A book of ordinances published by authority of the city council, though not precisely as prescribed, is competent evidence: Chicago &c. R. Co. v. Winters, 65 Ill. App. 435. But not so if not published by authority of the council: Louisville &c. R. Co. v. Patchen, 167 Ill. 204; s. c. 47 N. E. 368. It is prima facie proof of an ordinance to introduce the ordinance-book with the vote thereon and the proper authentication thereof with evidence of due publication: Merced Co. v. Fleming, 111 Cal. 46; s. c. 43 Pac. 392. An ordinance of a city providing protection from blasting is admissible in evidence in an action for injury caused by loose fragments of rock thrown upon plaintiff's house from blasting: Mahoney v. Dankwart, 108 Iowa 321; s. c. 79 N. W. 134; Ex parte Davis, 115 Cal. 445; s. c. 47 Pac. 258.

[437] Town of Flora v. Lee, 5 Ill. App. 629. See also, Becker v. City of Washington, 94 Mo. 375; s. c. 7 S. W. 291; Board &c. v. Henzler (N. J.), 41 Atl. 228.

[438] Willard v. Warden &c., 8 Conn. 247; Trustees &c. v. Lefler, 23 Ill. 88; Schott v. People, 89 Ill. 195. The record-book is the best evidence of the ordinance and can not be contradicted by parol: People v. Murray, 57 Mich. 396; s. c. 24 N. W. 118; City of Solomon v. Hughes, 24 Kan. 211; City of Lexington v. Headley, 5 Bush (Ky.) 508; Ball v. Fagg, 67 Mo. 481; City of Covington v. Ludlow, 1 Met. (Ky.) 295; City of St. Louis v. Foster, 52 Mo. 513. Cf. Knight v. Kansas City &c. R. Co., 70 Mo. 231; Barton v. City of Pittsburgh, 4 Brewst. (Pa.) 373; City of Troy v. Atchison &c. R. Co., 11 Kan. 519. But it is generally held that parol proof of publication is competent: Horr & Bemis Munic. Police

town or city court takes judicial notice of the ordinances of such town or city.[439] But courts other than municipal courts will not take judicial notice that there is an ordinance on a given subject, and such ordinance must be pleaded and proved.[440]

§ **559. Right to trial by jury.**—Constitutional provisions relating to trial by jury, being twice put in jeopardy, proceedings by indictment or information and the like, in criminal cases, are generally held to have been adopted with reference to the procedure previously existing. If in a given class of offenses trials without a jury were formerly the prevailing rule, this rule is not abrogated by the constitution.[441] Both in this country and in England the trangressions of municipal regulations enacted under the police power for the purpose of preserving the health, peace and good order, and otherwise promoting the general welfare within cities and towns, have for considerably more than a century been generally prosecuted without a jury.[442] It is certainly true that where the judgment against the defendant entails a fine, even if its collection may by virtue of the statute and ordinance be enforced by imprisonment, the proceeding remains a

Ord., § 187, and cases there cited; Town of Eldora v. Burlingame, 62 Iowa 32; s. c. 17 N. W. 148; Newlan v. President &c., 14 Ill. 364; Teft v. Size, 10 Ill. 432. See also, Raker v. Village of Maquon, 9 Ill. App. 155; Schwartz v. City of Oshkosh, 55 Wis. 490; s. c. 13 N. W. 450; Village of Betholto v. Conley, 9 Ill. App. 339.

[439] Incorporated Town of Scranton v. Danenbaum, 109 Iowa 95; s. c. 80 N. W. 221.

[440] Munson v. Fenno, 87 Ill. App. 655; Watt v. Jones, 60 Kan. 201; s. c. 56 Pac. 16; Field v. Malster, 88 Md. 691; s. c. 41 Atl. 1087; City of St. Louis v. Roche, 128 Mo. 541; s. c. 31 S. W. 915; Shanfelter v. Mayor &c., 80 Md. 483; s. c. 31 Atl. 439; Weaver v. Snow, 60 Ill. App. 624; People v. Casegeanda, 37 N. Y. S. 768; s. c. 73 N. Y. St. 445.

[441] Cooley Const. Lim. (5th ed.) 390, n. 3; Sedgwick Stat. & Const. Law 487, n., 491, n., 497; State v. Glenn, 54 Md. 572; Shafer v. Mumma, 17 Md. 331; Williams v. City Council &c., 4 Ga. 509; Hill v. Mayor &c., 72 Ga. 314, 319; Ward v. Farwell, 97 Ill. 593; Floyd v. Commissioners, 14 Ga. 354, 356; McGear v. Woodruff, 33 N. J. L. 213, 215; Howe v. Treasurer, 37 N. J. L. 145; State v. City of Topeka, 36 Kan. 76; s. c. 12 Pac. 310; Inwood v. State, 42 Ohio St. 186; People v. McCarthy, 45 How. Pr. (N. Y.) 97; Ex parte Kiburg, 10 Mo. App. 442, 447; McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516.

[442] State v. Lee, 29 Minn. 445; s. c. 13 N. W. 913; City of Greeley v. Hamman, 12 Colo. 94; s. c. 12 Pac. 1; Ex parte Hollwedell, 74 Mo. 395, 400; State v. Sly, 4 Or. 277; State v. Conlin, 27 Vt. 318; Wong v. City of Astoria, 13 Or. 538; s. c. 11 Pac. 295; State v. Noble, 20 La. An. 325; Byers v. Commonwealth, 42 Pa. St. 89; Shafer v. Mumma, 17 Md. 331; People v. Van Houten, 35 N. Y. S. 186; s. c. 69 N. Y. St. 265; Board of Police &c. v. Giron, 46 La. An. 1364; s. c. 16 So. 190; Hunt v. City of Jacksonville, 34 Fla. 504; s. c. 16 So. 398; and cases cited in the preceding note. But see State v. Larkins, 44 S. C. 362; s. c. 22 S. E. 409.

civil action so far as a jury trial is concerned, whether it be in the name of the state or not.[443] And in a number of well-considered decisions the same rule is held to apply where the judgment may include imprisonment in the first instance and not merely as an alternative.[444] There is excellent authority for the proposition that an ordinance providing for summary proceedings without a jury is in that respect void if the offense be also a statutory misdemeanor punishable by indictment and jury trial.[445]

§ **560. The same subject continued.**—It is believed that no court has gone further in supporting summary convictions than the supreme court of Colorado, in a case where the defendant was prosecuted for violating an ordinance regulating dram-shops. By general statute the act was made a misdemeanor punishable by indictment or information, trial by jury, etc., and it was strenuously insisted by counsel for

[443] Natal v. Louisiana, 139 U. S. 621; s. c. 11 S. Ct. 636; City of Oshkosh v. Schwartz, 55 Wis. 483, 487; s. c. 13 N. W. 552; President &c. v. Bell, 43 Wis. 488; State v. Smith, 52 Wis. 134; s. c. 8 N. W. 870; Chafin v. Waukesha Co., 62 Wis. 463; s. c. 22 N. W. 732; Baldwin v. City of Chicago, 68 Ill. 418; Ex parte Hollwedell, 74 Mo. 395; Horr & Bemis Munic. Police Ord., § 181.

[444] McGear v. Woodruff, 33 N. J. L. 213, 215. In Hill v. Mayor, 72 Ga. 314, the court said:—"If no man could be fined or imprisoned for violation of city police ordinances except by a jury trial on indictment, away would go all power in our municipal authorities to preserve peace and good order within their corporate limits." In affirming the same doctrine the supreme court of Colorado used the following vigorous language:—"The public welfare demands summary and speedy prosecution of offenders against municipal ordinances. To hold that unless there be presentation by indictment, trial by jury, and unless all the other constitutional rights and privileges accorded to defendants in criminal cases be extended to each and every person charged with these petty offenses, and imprisonment could not follow conviction, would be disastrous beyond measure to the welfare of those living within cities and towns, and would largely destroy the usefulness of such corporations:" Per Justice Helm, in City of Greeley v. Hamman, 12 Colo. 94; s. c. 12 Pac. 1.

[445] Some of these cases declare, however, that if the defendant is entitled on appeal to a trial by jury and there be no unreasonable limitation connected with the appeal, the constitutional provisions are satisfied. See In re Dana, 7 Ben. 1, 4; Callan v. Wilson, 127 U. S. 540; s. c. 8 S. Ct. 1301, confining this qualification to petty offenses. Where the defendant was required, as a condition precedent to the right of appeal, to execute a bond with approved sureties, not merely for his appearance in the police court, but also for the payment of any judgment rendered on the appeal, and likewise as a further condition to pay all costs accrued in the police court, the act would be unconstitutional in cases where the right of trial by jury exists: McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516.

the defense that it does not follow, because an act might be punishable under each of two different laws, that the procedure might be different—that the defendant was at least entitled to trial by jury. The court decided that a summary proceeding for violation of a municipal by-law is not necessarily unconstitutional, though it be a statutory misdemeanor. "The inquiry," said the court, "is not, Was the act complained of a public misdemeanor by statute or at the common law? but, Does the offense charged belong to a class of offenses that were usually proceeded against summarily?"[446]

§ **561. Certiorari and habeas corpus.**—Where no appeal is given by statute or charter from the decision of the municipal authorities, certiorari will issue for the purpose of a judicial review of their action.[447] In the United States the office of this writ has been extended beyond the practice in England, and it is used not only to review the decisions of courts, properly so called, but also the proceedings of special tribunals, commissioners, magistrates and officers of municipal corporations exercising judicial powers, affecting the rights of property of the citizen, when they act in a summary way, or in a new course different from that of the common law. The authorities are almost uniform in holding that mere legislative or ministerial acts, as such, can not be reviewed on certiorari.[448] There is no ground for the remedy unless it be made to appear that the plaintiff may suffer injury in case of non-intervention.[449] And it must also appear

[446] McInerney v. City of Denver, 17 Colo. 302; s. c. 29 Pac. 516. The court also recognized the converse of the proposition; that is to say, that though a particular offense may have been unknown to the common or statutory law before the adoption of the constitution, yet if it clearly belongs to a class of offenses theretofore triable by jury the constitutional guaranty applies. This is the doctrine of the United States supreme court, where, however, it was held that a person charged with conspiracy to prevent another from pursuing a lawful vocation was entitled to a jury trial: Callan v. Wilson, 127 U. S. 540; s. c. 8 S. Ct. 1301. So, too, on a charge of libel: In re Dana, 7 Ben. 1.

[447] Errors of law apparent on the record may be reviewed, but the trial is not de novo, and conclusions of fact can not be revised: Town of Camden v. Bloch, 65 Ala. 236. If there is a statutory remedy it is exclusive: City Council &c. v. Belser, 53 Ala. 379; Intendant v. Chandler, 6 Ala. 899; Jackson v. People, 9 Mich. 111; Taylor v. Mayor &c., 39 Ga. 59; State v. Bill, 13 Ired. L. (N. C.) 373. Where the time for appeal has been allowed to expire, there is no relief unless in special circumstances: Beasley v. Town of Beckley, 28 W. Va. 81; Poe v. Machine Works, 24 W. Va. 517.

[448] In re Wilson, 32 Minn. 145; s. c. 19 N. W. 723. Contra in New Jersey: Treasurer &c. v. Mulford, 26 N. J. L. 49; State v. Mayor &c., 29 N. J. L. 170.

[449] Davison v. Otis, 24 Mich. 23.

that he has some substantial interest in the subject-matter, on which the judgment of the court can act effectively and work advantage to him.[450] Where the plaintiff was convicted on his plea of not guilty and satisfied the judgment by paying the fine, he was not entitled to a review of the proceedings.[451] It is not the province of the writ of habeas corpus to retry any questions of fact upon which the findings of the court of original jurisdiction must be presumed to have been based. Unless it appears as a matter of law that an ordinance is void, the remedy of review must be had by other appropriate proceedings.[452]

[450] Colden v. Botts, 12 Wend. (N. Y.) 234.

[451] People v. Leavitt, 41 Mich. 470; s. c. 2 N. W. 812. The writ does not lie in favor of the corporation after trial and acquittal: Cranston v. Augusta, 61 Ga. 572. An abutting owner may maintain certiorari to review an ordinance changing the grade of a street in front of his property, and if the change of grade is justified only as part of an entire scheme he may question the legality of the scheme: Read v. City of Camden, 54 N. J. L. 347; s. c. 24 Atl. 549.

[452] Question of reasonableness depending on facts will not be thus retried: In re Wright, 29 Hun (N. Y.) 357. See also, Madden v. Smeltz, 2 Ohio C. C. 168.

CHAPTER XV.

EXPRESS CORPORATE POWERS.

SECTION

562. Powers of a municipal corporation generally.
563. Delegation of powers.
564. Delegation of power by the municipality.
565. Power which may be delegated.
566. The same subject continued.
567. Exercise of powers.
568. Mode of exercise.
569. Proceedings not reviewable.
570. The same subject continued.
571. Constitutionality of acts granting powers.
572. The same subject continued.
573. Validity of acts granting powers.
574. Power to "trade" should not be granted.
575. Power of towns as to villages within them.
576. Power as to issue of commercial paper.
577. As to trusts.
578. Purchase at tax sales.
579. Granting exclusive franchises.
580. The same subject continued.
581. Contracts not exclusive.
582. Improvements generally.
583. Costs of improvements.
584. Gas and water supply.
585. Natural-gas companies.
586. Establishment of electric plant.
587. Public property.
588. The same subject continued.
589. Parks.
590. Wharves.
591. The same subject continued.
592. Markets.
593. The same subject continued.
594. Streets generally.

SECTION

595. Construction of statutory provisions.
596. Protection of streets.
597. Obstructions in streets.
598. Use of streets by street-railways.
599. Telegraph- and telephone-poles in streets—Removal.
600. Vacation of streets.
601. Grading of streets.
602. Allowing the use of streets by railroads.
603. The same subject continued.
604. Regulations as to railroads using streets.
605. The same subject continued.
606. Crossings of railways.
607. Miscellaneous matters relating to streets.
608. Sewers.
609. Fire-limits—Public health.
610. Directions as to buildings.
611. Police power.
612. The same subject continued.
613. Regulation of liquor traffic.
614. To promote health.
615. General welfare, etc.
616. To license.
617. Occupations.
618. The same subject continued.
619. Public offenses.
620. The same subject continued.
621. Nuisances.
622. Holidays, etc.
623. Power to purchase, lease and convey real estate.
624. Power to subscribe for stock.
625. Power over watercourses.
626. Power to aid private charities.
627. Miscellaneous.

§ 562. Powers of a municipal corporation generally.—The powers of a municipal corporation are those granted in express words by its charter or the general statutes under which it is incorporated; the powers necessarily or fairly implied in or incident to the powers thus expressly granted; and the powers essential to the declared purposes of the corporation, not only convenient but indispensable.[1] These corporations being mere instrumentalities of the state for the more convenient administration of local government, their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn at its pleasure.[2] Only such powers and rights can be exercised under municipal charters as are clearly comprehended within their words, or derived therefrom by necessary implication, regard being had to the object of the grant. Any ambiguity or doubt arising out of the words used by the charter must be resolved in favor of the public.[3] Grants of power to supply water or gas have been

[1] Dillon Munic. Corp. (4th ed.), § 89; Richards v. Clarksburg, 30 W. Va. 491; s. c. 4 S. E. 774; Gas Co. v. Parkersburg, 30 W. Va. 435; s. c. 4 S. E. 650; Kelly v. Town of Milan, 21 Fed. 842; Cook Co. v. McCrea, 93 Ill. 236; City of Portland v. Schmidt, 13 Or. 17; s. c. 6 Pac. 221; City of Somerville v. Dickerman, 127 Mass. 272; Henke v. McCord, 55 Iowa 378; s. c. 7 N. W. 623; City of Richmond v. McGirr, 78 Ind. 192; Gilman v. City of Milwaukee, 61 Wis. 588; s. c. 21 N. W. 640; Town of Danville v. Shelton, 76 Va. 325; Smith v. City of Newbern, 70 N. C. 14; Blake v. Walker, 23 S. C. 517; City of St. Louis v. Bell Tel. Co., 96 Mo. 623; s. c. 10 S. W. 197; City of Eufaula v. McNab, 67 Ala. 588; Parish of Ouachita v. City of Monroe, 42 La. An. 782; s. c. 7 So. 717; City of Brenham v. Brenham Water Co., 67 Tex. 542; s. c. 4 S. W. 143; State v. Swift, 11 Nev. 128. The court in Los Angeles &c. Co. v. City of Los Angeles, 88 Fed. 720, state the doctrine of the text as follows:—"The general proposition is that a municipal corporation possesses and can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. And therefore it follows that any fair reasonable doubt concerning the existence of the power is resolved by the courts against the corporation and the power denied." To the same effect are Von Schmidt v. Widber, 105 Cal. 151, 157; s. c. 38 Pac. 682; City of Joplin v. Leckie, 78 Mo. App. 8.

[2] Barnes v. District of Columbia, 91 U. S. 540.

[3] Minturn v. Larue, 23 How. 435, holding that the legislature may grant exclusive control over ferries to a municipality, but that the charter of Oakland did not confer such exclusive privileges upon the city. In case of reasonable doubt as to the power of a municipal corporation under a charter the power is resolved against the corporation: City of Joplin v. Leckie, 78 Mo. App. 8. Power to reprint and publish a municipal charter does not include power to publish in connection therewith the ordinances: Quint v. City of Merrill, 105 Wis. 406; s. c. 81

upheld upon the ground that the power is a business or proprietary power, as distinguished from a governmental or legislative power.[4] And so is the power to construct sewers.[5] In their business transactions municipal and quasi-municipal corporations are governed by the same rules that govern private individuals and corporations.[6]

§ **563. Delegation of powers.**—The legislature having delegated some portion of its power to a municipal corporation, the latter must hold those powers in subordination to the general power. Such powers given for local purposes are regarded as trusts confided to the hands in which they are placed, and are not subject to be delegated by the departments in the control of which they are placed.[7] The subject of delegation of power may be properly treated from two standpoints: (a) delegation of power by the legislature to the municipality, and (b) delegation of power by the municipality to its municipal departments and officers. The municipal government established by the legislature, through the instrumentality of the charter, is, in effect, a transfer by the state of the functions of the state in so far as they are general and for the public welfare, and vests in

N. W. 664. The power of the city does not extend to the protection of subcontractors under contracts made with it: City of Philadelphia v. Madden, 8 Pa. Dist. R. 532.

[4] Los Angeles &c. Co. v. City of Los Angeles, 88 Fed. 720; Illinois Trust &c. Bank v. City of Arkansas City, 76 Fed. 271; s. c. 22 C. C. A. 171; 40 U. S. App. 257; City of Cincinnati v. Cameron, 33 Ohio St. 336; Safety Insulated Wire &c. Co. v. Mayor &c., 66 Fed. 140; s. c. 13 C. C. A. 375; State v. Mayor &c., 19 Mont. 518; s. c. 49 Pac. 15.

[5] City of Cincinnati v. Cameron, 33 Ohio St. 336.

[6] Speer v. Board &c., 88 Fed. 749; s. c. 32 C. C. A. 101; Illinois Trust &c. Bank v. City of Arkansas City, 40 U. S. App. 257; s. c. 22 C. C. A. 171; 76 Fed. 271.

[7] Thompson v. Schermerhorn, 6 N. Y. 92; Birdsall v. Clark, 73 N. Y. 73; s. c. 29 Am. R. 105; City of Brooklyn v. Breslin, 57 N. Y. 591; Lyon v. Jerome, 26 Wend. (N. Y.) 485; s. c. 37 Am. D. 271; Bibel v. People, 67 Ill. 172, 175; City of Kinmundy v. Mahan, 72 Ill. 462; State v. Fiske, 9 R. I. 94; State v. City of Trenton, 42 N. J. L. 72, 74; State v. Mayor &c., 47 N. J. L. 117; Hitchcock v. Galveston, 96 U. S. 341; Schenley v. Commonwealth, 36 Pa. St. 62; State v. Bell, 34 Ohio St. 194; Whyte v. Mayor &c., 2 Swan (Tenn.) 364; Smith v. Morse, 2 Cal. 524; Cooley Const. Lim. 204; Sedgwick Stat. & Const. Law 164; City of Oakland v. Carpentier, 13 Cal. 540 (declaring an ordinance giving the exclusive privilege of laying out, constructing, etc., wharves within the city for thirty-seven years, void as being a transfer of the corporate powers of the board); City of East St. Louis v. Wehrung, 50 Ill. 28 (holding that prosecution could not be maintained for a violation of an ordinance which attempted to delegate the power of the city council to the city treasurer by authorizing him to grant licenses to retail liquor and to fix the amount to be paid for it). See also, § 286 et seq., ante.

local officers the exercise of the general powers of the state, and in addition to this the municipality is made the depository of a twofold power of local legislation, and a proprietary power not unlike, in many respects, the power of a private corporation. The scope of the legislative functions of the municipality relate (1) to those subjects which are general in their nature but circumscribed as to territory, and which would otherwise be exercised by the legislature, (2) to those matters which are purely of a local nature, not common to the state at large and are the embodiment of the idea of pure local self-government, and (3) those things which are incidental to the corporate entity, as such, and have been appropriately styled proprietary or of a corporate business nature. The first naturally fall under the head of delegated powers while the latter are grants pure and simple. All power vested in the municipality which relates to the exercise of what is generally termed the police power is delegated; that which relates to the local self-government of the corporation, and the incidental matters relating thereto are not. A grant of legislative power to do a certain thing carries with it power to use all necessary and proper means to accomplish the end; and the legislature may authorize others to do things which it might properly, but can not conveniently or advantageously do itself.[8] Where powers are delegated to a municipal body which are beyond the scope of usual and ordinary powers and which may result in a public burden, they must be strictly pursued.[9] The legislature can delegate to municipal corporations the power to tax for public purposes only. Beyond this it would be public plunder.[10] A municipal corporation can not be authorized to tax its citizens for the support of a school, hospital or library, although its doors are open to the public, and a great number are accommodated, unless it is a public agency, and controlled by the state or county.[11] It is inherent in the idea of taxation that it should be for public good, and a law taxing one class of citizens for the benefit of another, or in furtherance of an industrial enterprise, is confiscation in all civilized countries. Almshouses and hospitals may be for public or private uses according to circumstances. When con-

[8] City of Chicago v. Stratton, 162 Ill. 494, 503; s. c. 44 N. E. 853; Chicago &c. R. Co. v. Jones, 149 Ill. 361; s. c. 37 N. E. 247.

[9] Ex parte Sims, 40 Fla. 432; s. c. 25 So. 280.

[10] Knowlton v. Board &c., 9 Wis. 410; Soens v. City of Racine, 10 Wis. 271; Lumsden v. Cross, 10 Wis. 282; Foster v. City of Kenosha, 12 Wis. 616; Hasbrouck v. City of Milwaukee, 13 Wis. 37; Brodhead v. City of Milwaukee, 19 Wis. 624; Curtis v. Whipple, 24 Wis. 350; Whiting v. Sheboygan &c. R. Co., 25 Wis. 167.

[11] Wisconsin Keeley Institute Co. v. Milwaukee Co., 95 Wis. 153; s. c. 70 N. W. 68; 36 L. R. A. 55.

trolled by the commonwealth and open to all who need such aid, they are for public uses, and may be sustained by taxation. But any institution, however admirable or useful, which is in the hands of private persons not accountable to the government is not for public use.[12] The legislature has power without express constitutional grant to confer upon a city power to enact and enforce an ordinance against carrying concealed weapons.[13] The legislature has the power to take from the municipality a power previously vested in it and vest such power in a board created by it for such purpose.[13a] A state may delegate power to license a calling or business when it may fairly be deemed detrimental to the public welfare or against public policy and might be prohibited entirely, and the exercise of such power is not taxation but a legitimate exercise of police power and not subject to judicial control.[14] The legislature can not delegate power to try offenses against the state to courts created for municipal offenses.[15] Power of control over streets in a city may be delegated by the legislature,[16] and so may the power to regulate weights and measures.[17] The legislature having power to impose terms and conditions on foreign corporations before they can do business in this state, may delegate this power to cities.[18]

§ **564. Delegation of power by the municipality.**—The rule is that power delegated to a municipality can not be delegated by it to some other body, officer or set of officers. The reason for this rule is illustrated by analogy in the law of agency, but rests mainly in the idea that power vested in one department of government can not be transferred to, assumed or exercised by another department. The public powers or trusts devolved by law, or charter, upon the council or governing body to be exercised by it when and in such manner as it shall judge best, can not be delegated to others.[19] Where the charter empowers the council to pass ordinances and prescribe penalties for a

[12] Loan Ass'n v. Topeka, 87 U. S. 655; Lowell v. City of Boston, 111 Mass. 454; St. Mary's Industrial School v. Brown, 45 Md. 310; Philadelphia Assn. &c. v. Wood, 39 Pa. St. 73; Hitchcock v. City of St. Louis, 49 Mo. 484; State v. Osawkee Tp., 14 Kan. 418.

[13] Town of Ocean Springs v. Green, 77 Miss. 472; s. c. 27 So. 743.

[13a] See ch. 41, vol. 2. But it can not take from a municipality the control of its fire-department: State v. Fox (Ind.), 63 N. E. 19.

[14] Humes v. City of Ft. Smith, 93 Fed. 857.

[15] Grant v. Camp, 105 Ga. 428; s. c. 31 S. E. 429.

[16] City Council &c. v. Parker, 114 Ala. 118; s. c. 21 So. 452.

[17] Ford v. New York &c. R. Co., 53 N. Y. S. 764; s. c. 33 App. Div. (N. Y.) 474.

[18] Hartford Fire Ins. Co. v. City of Peoria, 156 Ill. 420; s. c. 40 N. E. 967; Walker v. City of Springfield, 94 Ill. 364.

[19] City of Chicago v. Stratton, 162 Ill. 494, 500; s. c. 44 N. E. 853.

violation not exceeding a certain sum, or imprisonment not exceeding a certain period, the specific fine and imprisonment must be fixed in the ordinance. This power can not be delegated to the court before whom proceedings are had.[20] The city council can not delegate power to a board of health so as to make the regulations of the latter ordinances the violation of which will be a misdemeanor,[21] nor delegate power to another to make a rule which will prohibit the slaughter of animals within the city limits,[22] nor can power to grade a street be delegated to the city engineer.[23] But an ordinance giving a city engineer supervision of an improvement in order to secure compliance with the ordinance as to work done and material used, is not a delegation of power vested in a council.[24] If the ordinance, however, directs that the engineer shall designate where inlets and catch-basin covers shall be placed at street corners, and that cross-walks be built in form as designated by him, it is invalid. And so, also, as to changes authorized which will increase or diminish the costs.[25] The power to determine what articles of merchandise are injurious to public health or a fraud on the public can not be delegated;[26] and where the entire control of finances is vested in a city council it can not delegate the power to the mayor to sell its bonds and give him discretion as to the price;[27] and so where the council has power to regulate the compensation of officers, etc., it can not delegate to the mayor power to contract for the collection of taxes.[28] But delegation of power to sell water and fix rates to the department of public works for use outside the city is not void for the reason that the city is not obliged to sell for that purpose.[29] Power lodged in a common council can not be delegated to a committee;[30] nor can power to prescribe penalties be delegated to a justice of the peace before whom a prosecution is had.[31]

[20] Tomlin v. City of Cape May, 63 N. J. L. 429; s. c. 44 Atl. 209.

[21] State v. Beacham, 125 N. C. 652; s. c. 34 S. E. 447.

[22] Cocker v. Du Coteau Landing Co., 16 Rap. Jud. Que. S. C. 72.

[23] City of Westport v. Martin, 62 Mo. App. 647.

[24] Bradford v. City of Pontiac, 165 Ill. 612; s. c. 46 N. E. 794; Jacksonville R. Co. v. City of Jacksonville, 114 Ill. 562; s. c. 2 N. E. 478.

[25] Bradford v. City of Pontiac, supra; Lake Shore &c. R. Co. v. City of Chicago, 144 Ill. 391; s. c. 33 N. E. 602; Foss v. City of Chicago, 56 Ill. 354; Rich v. City of Chicago, 152 Ill. 18; s. c. 38 N. E. 255.

[26] City of Cairo v. Coleman, 53 Ill. App. 680.

[27] Blair v. City of Waco, 75 Fed. 800; s. c. 21 C. C. A. 517.

[28] Brand v. City of San Antonio (Tex. Civ. App.), 37 S. W. 340.

[29] Cooper v. City of Brooklyn, 42 N. Y. S. 762; s. c. 11 App. Div. (N. Y.) 71.

[30] Foster v. City of Cape May, 60 N. J. L. 78; s. c. 36 Atl. 1089.

[31] State v. Ocean Grove Camp Meeting, 59 N. J. L. 110; s. c. 35 Atl. 794. Construction of Kansas City

§ 565. Power which may be delegated.—There are many powers which may be legally and judiciously delegated by the municipality. Thus power to perform a ministerial act may be delegated, but when delegated can not be again delegated by that body to another.[32] It is not a delegation of power to prohibit the maintenance of a livery-stable in certain blocks unless a majority of the lot-owners consent in writing to the location there.[33] And so it is not a delegation of power to provide that an ordinance shall not go into effect unless petitioners shall pay into the treasury a specified sum.[34] Power given to a contractor to construct a sidewalk of pine, white or burr oak, is not a delegation of power.[35] Submitting the question of whether a proposed irrigation district shall be organized under a statute to a vote of the citizens of the district is not a delegation by the legislature of power to create a public corporation.[36] A town may delegate to the mayor and clerk the duty of taking up warrants, and issuing new ones in their stead.[37] Leaving the execution of work to a street committee is not a delegation of power belonging to the council, where the council has ordered the work to be done.[38] Power to contract for the construction of water-works is not delegated to the commissioners of the water department by a resolution authorizing them to prepare plans and to advertise for bids.[39]

§ 566. The same subject continued.—The legislature had the constitutional right to authorize the council of a city to empower the board of police to make rules and regulations respecting the use of the streets of Boston.[40] The court said: "The several towns and cities

charter in reference to delegation of power: Kansas City v. Duncan, 135 Mo. 571; s. c. 37 S. W. 513.

[32] City of Tampa v. Salomonson, 35 Fla. 446; s. c. 17 So. 581.

[33] City of Chicago v. Stratton, 162 Ill. 494; s. c. 44 N. E. 853; reversing s. c. 58 Ill. App. 539.

[34] Heman Const. Co. v. Loevy, 64 Mo. App. 430.

[35] Gallaher v. Smith, 55 Mo. App. 116.

[36] Fallbrook Irr. Dist. v. Brodley, 164 U. S. 112; s. c. 17 S. Ct. 56.

[37] State v. Winter, 15 Wash. 407; s. c. 46 Pac. 644.

[38] Town of Harrisonburg v. Roller, 97 Va. 582; s. c. 34 S. E. 523. Cf. In re Taxes Delinquent &c., 75 Minn. 456; s. c. 78 N. W. 115; State v. West Duluth Land Co., 75 Minn. 456; s. c. 78 N. W. 115; In re North Terrace Park, 147 Mo. 259; s. c. 48 S. W. 860; Kansas City v. Bacon, 147 Mo. 259; s. c. 48 S. W. 860.

[39] Continental Const. Co. v. City of Altoona, 92 Fed. 822; s. c. 35 C. C. A. 27. What is not delegation of power,—see In re House, 23 Colo. 87; s. c. 46 Pac. 117.

[40] Commonwealth v. Plaisted, 148 Mass. 375, 383; s. c. 19 N. E. 224, where it was held that under this power, delegated to the police board by the council, the board was empowered to require an itinerant musician to take out a license and pay a small fee therefor. See also, as to reasonableness of ordinance, Commonwealth v. Worcester, 3 Pick. (Mass.) 462; Pedrick v. Bailey, 12 Gray (Mass.) 161; Vandine, Peti-

are agencies of government largely under the control of the legislature. The powers and duties of all the towns and cities, except so far as they are specifically provided for in the constitution, are created and defined by the legislature, and we have no doubt that it has the right in its discretion to change the powers and duties created by itself and to vest such powers and duties in officers appointed by the governor, if in its judgment the public good requires this, instead of leaving such officers to be elected by the people or appointed by the municipal authorities."[41] County officers authorized by law to contract for the building of a court-house can not delegate such authority to a private individual.[42]

§ **567. Exercise of powers.**—Where a city council has power to act in a given case and the mode of action is not prescribed by charter, it may proceed either by resolution or by ordinance.[43] Where it is intended to pay for an electric plant by the issuance and sale of city bonds, and the statute empowers the city to erect such a plant upon the approval of a majority of the voters of the city, it is proper to submit to vote the entire matter of erecting the plant and issuing the bonds in one proposition.[44] Under that provision of the same act which provides that the city council may order the submission of the question of electric lighting to a vote, or that the mayor may do so upon petition of a certain number of taxpayers, the adoption of an ordinance providing for the erection of an electric plant is not a condition precedent to the submission of the question. Though the issuance of the bonds at the time they were authorized by vote would have been in violation of the constitutional limitation as to the amount of municipal indebtedness allowed, yet, if when they were issued they

tioner, 6 Pick. (Mass.) 187; Commonwealth v. Bean, 14 Gray (Mass.) 52; Commonwealth v. Curtis, 9 Allen (Mass.) 266; Commonwealth v. McCafferty, 145 Mass. 384; s. c. 14 N. E. 451. As to requiring a license, see Commonwealth v. Stodder, 2 Cush. (Mass.) 562, 573; Nightingale, Petitioner, 11 Pick. (Mass.) 168; Pedrick v. Bailey, 12 Gray (Mass.) 161; Commonwealth v. Brooks, 109 Mass. 355. As to the fee, see Commonwealth v. Stodder, 2 Cush. (Mass.) 562; Welch v. Hotchkiss, 39 Conn. 140; Cooley Const. Lim. (5th ed.) 242, n.; 1 Dillon Munic. Corp. (4th ed.), § 357. As to the legality and propriety of delegating such powers to the police board or other boards, see Heland v. City of Lowell, 3 Allen (Mass.) 407; City of Taunton v. Taylor, 116 Mass. 254, 260; Sawyer v. State Board &c., 125 Mass. 182, 196; Commonwealth v. Young, 135 Mass. 526; City of Brooklyn v. Breslin, 57 N. Y. 591; Birdsall v. Clark, 73 N. Y. 73; State v. Mayor &c., 34 N. J. L. 163.

[41] Commonwealth v. Plaisted, 148 Mass. 375; s. c. 19 N. E. 224.

[42] Russell v. Cage, 66 Tex. 428; s. c. 1 S. W. 270.

[43] City of Crawfordsville v. Braden, 130 Ind. 149; s. c. 28 N. E. 849.

[44] Thompson-Houston Electric Co. v. City of Newton, 42 Fed. 723.

were not in excess, they are not void, no debt being created until the bonds are issued. That such bonds were sold and delivered before the ordinance providing for issuing them took effect was no ground for enjoining their payment at the suit of a taxpayer. A city, by granting the privilege to a private corporation to erect an electric plant for the purpose of lighting the city without any grant of exclusive rights is not estopped from erecting such a plant itself when power has been granted it by statute to do so.[45] A natural-gas company entering into business under an ordinance of a city having power to regulate its prices, but silent on the subject of rates, is not exempted from the provisions of a subsequent ordinance with reference thereto.[46] The provisions of an ordinance denying gas companies the right to carry on their business unless they execute a bond, and declaring the execution of the bond of itself a full acceptance of the ordinance with all its requirements, is invalid as to a company already in business under an ordinance requiring no such bond.[47] The power to erect water-works under a statute which provides for the approval of the voters of the city by a majority vote may be exercised by the council passing an ordinance, in advance of an election, prescribing the character of the water-works and the tax to be levied to meet its cost, and afterwards submitting the question to the electors.[48] If a charter of a city requires any sale or lease of its real estate to be made at public auction to the highest bidder, an ordinance of its council making a lease of any of such property to a corporation upon the payment of a rent reserved has been held to be void and to pass no title to the corporation.[49]

§ 568. **Mode of exercise.**—The powers of a municipal corporation, whether regarded as political or governmental, or those of a mere private corporation, can be exercised only in conformity with the provisions of its charter. The legislature can impose such restrictions as it thinks proper, as in the case cited it saw fit to require the formalities of legislation for the disposition of the city property, for the imposition of taxes, the regulation of the fire-department and matters connected with the general welfare of the city.[50] All contracts made

[45] Thompson-Houston Electric Co. v. City of Newton, 42 Fed. 723, for this and preceding propositions.

[46] City of Rushville v. Rushville &c. Gas Co., 132 Ind. 575; s. c. 28 N. E. 853.

[47] City of Rushville v. Rushville &c. Gas Co., 132 Ind. 575; s. c. 28 N. E. 853, holding that the enforcement of this void ordinance by prosecution of the company's employes was properly enjoined.

[48] Taylor v. McFadden, 84 Iowa 262; s. c. 50 N. W. 1070.

[49] San Francisco &c. R. Co. v. City of Oakland, 43 Cal. 502.

[50] McCracken v. City of San Francisco, 16 Cal. 591.

by a municipal corporation must conform to the mode prescribed in its charter for making contracts.[51] The provisions of a statute authorizing an act by a municipal corporation must be strictly followed.[52] Where no method is prescribed by law in which a municipality shall exercise its powers, but it is left free to determine the method for itself, it may act either by resolution or ordinance.[53] Bonds issued by a corporation under the corporate seal, but without the passage of a resolution authorizing the issue, have been held void where the legislature authorized the issue "at such time or times as the board of trustees may by resolution direct."[54] Where the power to perform an act is in a municipal corporation, and in the execution thereof the prescribed form is not followed, the corporation has the power to subsequently ratify and confirm the informal act, so as to make it as binding as if originally done in the proper manner.[55] Property of a municipal corporation can only be conveyed in the mode of conveying its property particularly pointed out in its charter.[56]

§ **569. Proceedings not reviewable.**—The action of a county board of supervisors in borrowing money, and issuing county bonds therefor, for the purpose of improving highways in a town, is legislative and not judicial, and can not be reviewed on certiorari.[57] There need be no failure of justice if the power is wrongly used. Any aggrieved taxpayer could arrest all proceedings.[58] Though the proceedings of county commissioners in establishing highways may be irregular, as the boards are usually composed of men unskilled in the law, such irregularities not affecting the substantial rights of the parties affected will be disregarded.[59] The New York statute providing for the dis-

[51] Zottman v. San Francisco, 20 Cal. 96, 98.

[52] Glass v. Ashbury, 49 Cal. 571; McCoy v. Briant, 53 Cal. 247.

[53] Halsey v. Rapid Transit St. R. Co., 47 N. J. L. 380; s. c. 20 Atl. 859.

[54] McCoy v. Briant, 53 Cal. 247.

[55] Lucas v. City of San Francisco, 7 Cal. 463.

[56] Holland v. City of San Francisco, 7 Cal. 361. See § 258 et seq., ante.

[57] People v. Board &c., 131 N. Y. 468; s. c. 30 N. E. 488; rev'g s. c. 16 N. Y. S. 705; 62 Hun (N. Y.) 620 (mem.); construing Laws N. Y. 1869, ch. 855, § 1. See also, People v. Mayor, 2 Hill (N. Y.) 9; In re Mount Morris Square, 2 Hill (N. Y.) 14; People v. Board of Health, 33 Barb. (N. Y.) 344; People v. Board &c., 43 Barb. (N. Y.) 232; s. c. affirmed 34 N. Y. 516; People v. Walter, 68 N. Y. 403; People v. Jones, 112 N. Y. 597; s. c. 20 N. E. 577.

[58] People v. Board &c., 131 N. Y. 468; s. c. 30 N. E. 488. See also, Barker v. Town of Oswegatchie, 16 N. Y. S. 727; s. c. 62 Hun (N. Y.) 208. Remedies are provided in Code of New York, §§ 1925, 1968 et seq., Laws N. Y. 1881, ch. 521, as amended by Laws N. Y. 1887, ch. 673.

[59] Fulton v. Cummings, 132 Ind. 453; s. c. 30 N. E. 949. Proceedings

continuance of proceedings to open a street on objection of abutting owners[60] has been construed not to apply to the opening of streets of the first class, which by provision of the act is to be whenever the board of street opening shall think the public interest requires it, but only to the opening of streets of the second and third classes, which the act provides shall be on request of a certain proportion of the owners of the frontage. It was held that the power to discontinue was express and complete, and that the decision was final and conclusive, not subject to review.[61] In determining what property would be benefited by an improvement, and hence should be assessed, the action of the common council of a city is conclusive.[62] Under the provision of the constitution of Michigan[63] the legislature may confer upon boards of supervisors the power to determine when there exist the prerequisite facts authorizing a special election of the people of the municipal corporation upon any question.[64] Where a board of commissioners is required by statute to erect a court-house where the same has not been done, and to keep the county building in repair, and authorized to provide the means to construct, complete or repair the court-house or other public buildings whenever it shall be necessary to do so, it is for them alone to determine whether an old court-house should be replaced by a new one; and in the absence of an abuse of discretion amounting to fraud, they will not be enjoined from carrying out their plans, though it may seem to taxpayers that the old building is sufficient.[65]

§ 570. **The same subject continued.**—The jurisdiction of boards of supervisors in the exercise of their powers under the provisions of the Iowa code[66] has been held to be exclusive, and an injunction will

for establishing highways are provided for in Burns R. S. Ind. 1901, § 6859.

[60] Consolidation Act, Laws of New York, ch. 410, § 990.

[61] In re Alexander Avenue, 133 N. Y. 436; s. c. 31 N. E. 316; dismissing appeal from 17 N. Y. S. 933.

[62] Teegarden v. City of Racine, 56 Wis. 545; s. c. 14 N. W. 614.

[63] Constitution of Michigan, art. 4, § 38, authorizes the conferring upon boards of supervisors of such powers of a local legislative and administrative character as the legislature may deem proper.

[64] Friesner v. Common Council &c., 91 Mich. 504; s. c. 52 N. W. 18, where it was held that a board of county supervisors having examined a petition for a special election on local option and declared that the election had been prayed for by the requisite number of electors, such declaration by them was final, and that it was not competent afterwards to show that a certain number of the petitioners were not qualified voters.

[65] Kitchel v. Board &c., 123 Ind. 540; s. c. 24 N. E. 366.

[66] Code Iowa, §§ 281, 287, regulates elections for the relocation of county sites and vests in the board of supervisors of counties full power to

not lie to restrict the board in the exercise of its power, even though the petition is an attempt to perpetrate a fraud on the board (it containing in the case cited thousands of names of persons who were not "legal voters"). The board has no power to investigate the alleged fraud, being bound by the facts as they appear on the face of the proceedings.[67] The court distinguished and held not applicable to this case several cases cited in favor of the complainant.[68] In Mississippi the power of a board of supervisors over court-houses and sites for court-houses is exclusive, and no court can interfere with the exercise of this power so long as it is exercised only unwisely and without discretion; and the purchase of a site for a court-house, the county having already a court-house site, is not such a usurpation of power as will warrant the interference of courts.[69] Where the question of the necessity of taking land for a road was settled by a board of supervisors it is not a question for the court to pass upon.[70]

§ 571. **Constitutionality of acts granting powers.**—An Ohio statute providing that in any village in any county containing a city of the first grade of the first class, in which no sidewalks have already

determine the sufficiency of the petition, and to authorize the submission of the question of relocation to a vote.

[67] Luce v. Fensler, 85 Iowa 596; s. c. 52 N. W. 517, the court denying the right to review a decision of the board upon such matter. See also, Herrick v. Carpenter, 54 Iowa 340; s. c. 6 N. W. 574 (as to the power of the legislature to provide for relocation of county sites by a general law and giving exclusive authority to a special tribunal in such matters); 4 Amer. & Eng. Encyc. Law 403; Alexander v. People, 7 Colo. 155; s. c. 2 Pac. 894; Dudley v. Mayhew, 3 N. Y. 9; Heiser v. Mayor &c., 104 N. Y. 68, 72; s. c. 9 N. E. 866; Phillips v. Ash's Heirs, 63 Ala. 414, 418; Chandler v. Hanna, 73 Ala. 390; Commonwealth v. Leech, 44 Pa. St. 332; Sedgwick Stat. & Const. Law 94; Baker v. Board, 40 Iowa 226, 228. As to courts of equity interposing to control, see 1 High Injunctions, § 50; 2 High Injunctions, § 1311; Hyatt v. Bates, 40 N. Y. 164.

[68] "Rice v. Smith, 9 Iowa 570, [where] a vote to relocate the county seat had been taken, and the question involved was the right of the county judge to erect an expensive public building which was required to be at the county seat, while the matter of location was in controversy. The question involved in Sweatt v. Faville, 23 Iowa 321, 326, was whether the county seat had been relocated, and arose under the revision of 1860 and not under the present law. The question involved in this case was not considered in that. The case of Sinnett v. Moles, 38 Iowa 25, arose under a statute which provided for the voting of a tax in aid of the construction of a railway. The statute, the facts and the principles involved [in that case] were in many respects so unlike those [here that they need no consideration]."

[69] Rotenberry v. Board &c., 67 Miss. 470; s. c. 7 So. 211.

[70] Butte Co. v. Boydstun, 68 Cal. 189; s. c. 8 Pac. 835; 11 Pac. 781.

been constructed, etc., the council of such village may construct, etc.,[71] was held not to be a sufficient classification to satisfy the constitutional requirement that laws of a general nature shall have a uniform operation throughout the state.[72] Upon this subject, Beasley, C. J., of New Jersey, said that a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently manifest and important to make them a class by themselves, and yet the marks of distinction on which the classification is founded may be such that the law may be in contravention of a constitutional provision prohibiting the enactment of special laws which regulate the internal affairs of towns and cities.[73] The Minnesota court said: "The true practical limitation of the legislative power to classify is that the classification shall be upon some apparent natural reason—some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them."[74] The New Jersey chief justice said: "The marks of distinction, on which the classification is founded, must be such in the nature of things as will, in some reasonable degree at least, account for or justify the restriction of the legislation."[75] The classification must be just and reasonable, and not arbitrary.[76]

§ 572. **The same subject continued.**—It was held in Wisconsin that where a city charter gave to every lot-owner a right to compensation for injury resulting from change of grade of a street, a legislative act which undertook to suspend and declare that provision[77] inapplicable to certain streets was repugnant to the constitution of Wisconsin, which entitles every person to a certain remedy in the law for all injuries he may receive in his person, property or character;[78] also

[71] "An act to authorize villages to levy special assessments for the construction and improvement of sidewalks and to be supplementary to § 2328 of the revised statutes and known as § 2328a:" 88 Ohio L. 311.

[72] Const. Ohio, art. 2, § 26; Costello v. Wyoming, 49 Ohio St. 202; s. c. 30 N. E. 613.

[73] State v. Hammer, 42 N. J. L. 435, 440.

[74] Nichols v. Walter, 37 Minn. 264, 272; s. c. 33 N. W. 800, 802.

[75] State v. Hammer, 42 N. J. L. 435, 440.

[76] Bronson v. Oberlin, 41 Ohio St. 476.

[77] Laws of Wisconsin of 1891, ch. 254, entitled "An act to authorize the city of Milwaukee to change the grade of streets," which amended a law providing that the owner of any lot affected or injured thereby should be "entitled to compensation" by authorizing the common council of that city to change the grade of certain streets in designated wards "without paying for any injury or damage thereby occasioned."

[78] Anderton v. City of Milwaukee, 82 Wis. 279; s. c. 52 N. W. 95. The

to the constitution of the United States, amendment 14, section 1, which declares that no state shall "deny to any person within its jurisdiction the equal protection of its laws;"[79] also to the state constitution, on the ground that it was a local act and related to a subject not expressed in its title.[80]

§ 573. **Validity of acts granting powers.**—In exercising the power to levy assessments upon property-owners for improvements the tax proceedings required by the charter must be regarded, when taken together, as "due process of law," within the principles sanctioned by the supreme court of the United States.[81]

§ 574. **Power to "trade" should not be granted.**—The justices of the supreme judicial court of Massachusetts have given an opinion to the general court that the legislature can not authorize a city to buy coal and wood as fuel and sell them to its inhabitants. Parker, J., modified his assent to this so far as to say it might if the necessities of society as now organized could be met only by the adoption of such measures. Holmes, J., dissented upon the ground that the purpose was no less public when the article (proposed to be furnished the public) is wood or coal than when it is water or gas or electricity or education, to say nothing of cases like the support of paupers or the taking

court considered this act special class legislation; and that such discriminate exercise of arbitrary legislative power was void. See also, Bull v. Conroe, 13 Wis. 233; Durkee v. City of Janesville, 28 Wis. 464; Hincks v. City of Milwaukee, 46 Wis. 559; s. c. 1 N. W. 230; Culbertson v. Coleman, 47 Wis. 193; s. c. 2 N. W. 124; Hughes v. City of Fond du Lac, 73 Wis. 380, 382; s. c. 41 N. W. 407; City of Janesville v. Carpenter, 77 Wis. 288; s. c. 46 N. W. 128; Wilder v. Chicago &c. R. Co., 70 Mich. 382; s. c. 38 N. W. 289; State v. Sheriff &c., 48 Minn. 236; s. c. 51 N. W. 112.

[79] Anderton v. City of Milwaukee, 82 Wis. 279; s. c. 52 N. W. 95. The court said:—"It [this act] attempts to make an arbitrary classification and distinction in regard to such an established grade between lots similarly situated and subject to the same or substantially the same conditions," and therefore violates the United States constitution amendment. Cf. Scott v. City of Toledo, 36 Fed. 385.

[80] Anderton v. City of Milwaukee, 82 Wis. 279; s. c. 52 N. W. 95. See also, Durkee v. City of Janesville, 26 Wis. 697; Yellow River &c. Co. v. Arnold, 46 Wis. 214; s. c. 49 N. W. 971.

[81] Meggett v. City of Eau Claire, 81 Wis. 326; s. c. 51 N. W. 566, holding the charter not repugnant to Amend. Const. U. S., art. 14, § 1. See also, as to power of legislature to authorize, Warner v. Knox, 50 Wis. 429; s. c. 7 N. W. 372; Weeks v. City of Milwaukee, 10 Wis. 242; Soens v. Racine, 10 Wis. 271; Lumsden v. Cross, 10 Wis. 282; State v. City of Portage, 12 Wis. 562; Bond v. City of Kenosha, 17 Wis. 284; Blount v. City of Janesville, 31 Wis. 648; May v. Holdridge, 23 Wis. 93; Mills v. Charleton, 29 Wis. 400; Evans v. Sharp, 29 Wis. 564; Dill v. Roberts, 30 Wis. 178;

of land for railroads or public markets.[82] The principle which controlled the majority of the court was that if this bill was passed it would authorize a carrying on of business which must be with money raised by taxation, and the legislature could authorize a city or town to tax its inhabitants only for public purposes.[83] The court

Dean v. Borchsenius, 30 Wis. 236, 247; Johnson v. City of Milwaukee, 40 Wis. 315. As to "due process of law," see Hagar v. Reclamation Dist., 111 U. S. 701; s. c. 4 S. Ct. 663; Kentucky Railroad Tax Cases, 115 U. S. 321; s. c. 6 S. Ct. 57; Spencer v. Merchant, 125 U. S. 345; s. c. 8 S. Ct. 921; Palmer v. McMahon, 133 U. S. 660; s. c. 10 S. Ct. 324; Lent v. Tillson, 140 U. S. 316; s. c. 11 S. Ct. 825; Fass v. Seehawer, 60 Wis. 525; s. c. 19 N. W. 533; Baldwin v. Ely, 66 Wis. 171, 188, 191; s. c. 28 N. W. 392; Murphy v. Hall, 68 Wis. 202; s. c. 31 N. W. 754; Davidson v. New Orleans, 96 U. S. 97, 104. In Lent v. Tillson, 140 U. S. 316; s. c. 11 S. Ct. 825, the court said:—"But errors in the mere administration of the statute [granting the power to widen a street], not involving jurisdiction of the subject and of the parties, could not justify this court, in its re-examination of the judgment of the state court upon writ of error, to hold that the state had deprived or was about to deprive the plaintiffs of their property without 'due process of law.'"

[82] Opinion of Justices, 155 Mass. 598; s. c. 30 N. E. 1142.

[83] Kingman v. City of Brockton, 153 Mass. 255; s. c. 26 N. E. 998; Opinion of Justices, 150 Mass. 592; s. c. 24 N. E. 1084; Mead v. Inhabitants &c., 139 Mass. 341; s. c. 1 N. E. 413; Lowell v. City of Boston, 111 Mass. 454; State v. Osawkee Tp., 14 Kan. 418; Mather v. City of Ottawa, 114 Ill. 659; s. c. 3 N. E. 216; Loan Ass'n v. Topeka, 20 Wall. 655; Cole v. La Grange, 113 U. S. 1; s. c. 5 S. Ct. 416; Ottawa v. Carey, 108 U. S. 110; s. c. 2 S. Ct. 361; Attorney-General v. City of Eau Claire, 37 Wis. 400; State v. City of Eau Claire, 40 Wis. 533; Allen v. Inhabitants &c., 60 Maine 124; Opinion of Judges, 58 Maine 590. The court said:—"Up to the present time, however, none of the purposes for which cities and towns have been authorized to raise money has included anything in the nature of what is commonly called "trade" or "commercial business." Instances can be found of some very curious legislation by towns in the colonial and provincial times, some of which would certainly now be thought to be beyond the powers of towns under the constitution. Whatever the theory was, towns, in fact, under the colony charter, and for some time under the province charter, often acted as if their powers were limited only by the opinion of the inhabitants as to what was best to be done. This was the result of their peculiar situation and condition, and the powers of towns or of the general court were not much considered. The exercise of these extraordinary powers, however, gradually died out." The only instance referred to of a town purchasing articles for its inhabitants is that of Boston, in March, 1713–14, voting to lay in a stock of grain to the amount of five thousand bushels of corn, and to store it in some convenient place, and it was left to the selectmen to dispose of it as they saw fit. This followed the prohibition by the general court of the exportation of grain on account of its scarcity in the fall of 1713. Of this the court said:—"It is apparent that the original purpose was to provide against a famine, and that it was

sanction the rule as expressed in another opinion, that "it must often be a question of kind and degree whether the promotion of the interests of many individuals in the same community constitutes a public service or not."[84]

§ **575. Power of towns as to villages within them.**—A Wisconsin statute provided that "all powers relating to villages and conferred upon village boards by the provisions of chapter 40 of the revised statutes and all acts amendatory thereof, excepting those the exercise of which would conflict with the provisions of law relative to towns and town boards, are hereby conferred upon towns and town boards of towns containing one or more unincorporated villages having each a population of not less than one thousand inhabitants, and are made applicable to such unincorporated village or villages, and may be exercised therein when directed by resolution of the qualified electors of the town at the last preceding annual town meeting."[85] This act was held not void for uncertainty, as the powers granted to the town boards are defined by the act therein referred to as governing villages. Nor was it void for attempting to incorporate a village or villages by a special act. It did not incorporate a village as a separate municipality; it simply enlarged the powers of town boards. Nor did it violate the constitution, article 11, section 3. Even though the legislature may in its discretion enforce the incorporation of communities as cities or villages, under proper limitations, this power does not deprive the legislature of the power to legislate for the control and government of such communities before it is deemed wise to incorporate them.[86] Nor did it violate the section of the constitution providing that "the legislature shall establish but one system of town and county government."[87] It was held that the exercise of the power

not the intention of the town to assume the business of buying and selling all the grain which the inhabitants needed, but of keeping such an amount in store as was necessary in order that small quantities might be obtained, particularly by the poorer inhabitants, at what the selectmen, or a committee of the town, or the town itself, deemed reasonable prices. On May 25, 1795, the town voted to sell the granary. This action of the town of Boston was an exception to the usages of towns, and it appears from the reports of committees that before the revolution it had come to be considered as of doubtful expediency, and during the revolution, or not long after it, it was discontinued."

[84] Opinion of Justices, 150 Mass. 592; s. c. 24 N. E. 1084.

[85] Laws Wis. 1883, ch. 292.

[86] Land &c. Co. v. Brown, 73 Wis. 294; s. c. 40 N. W. 482.

[87] Land &c. Co. v. Brown, supra. The court said:—"[This law] is an amendment of the laws concerning towns and the government thereof. Like many other laws of the state, it provides for the exercise of different powers by the boards of different towns, when there is anything in a town which calls for the exercise of such different or additional powers. The act is as general as any

under this act by the town board in providing for water-works, protection against fire and making police regulations for a village within the limits of the town was proper and fully authorized. An objection was made to this that the law should be declared void under some supposed rule of public policy forbidding taxation of persons for purposes of expenditure which would not benefit their property. The court overruled this objection.[88]

§ **576. Power as to issue of commercial paper.**—Charter power to borrow money "for general purposes" "on the credit" of a city only includes authority to borrow money for ordinary governmental purposes, such as are generally carried out with revenues derived from taxation; and the presumption is that the power was intended to confer the right to borrow money in anticipation of the receipt of taxes.[89] Neither does this charter power include the power to issue and sell negotiable bonds, nor can such power be inferred from the provision that "bonds of the city shall not be subject to tax under this act."[90] The court relies mainly for the correctness of its conclusion upon a case in which it was held that the implied power of a municipal corpo-

other general act. It provides for the exercise of the additional powers in all towns in which villages are situated having a given number of inhabitants. It is not subject to the criticism that though general in form it is special in fact, as it is a matter of public notoriety that there are and have been several towns in the state to which the act can be applied. . . . Such act is not a violation of the system of town government, but a part of the system, in order to adapt the system to the peculiar wants of certain towns in the state." As to the constitutionality of laws applying to cities and towns on the basis of population, situation, etc., as being local and special laws, see State v. Circuit Court (N. J.), 15 Atl. 272 and note; Atlantic City &c. Co. v. Atlantic City &c. Co. (N. J.), 15 Atl. 581; Cross v. Cherry, 122 Pa. St. 417; s. c. 15 Atl. 782.

[88] Land &c. Co. v. Brown, 73 Wis. 294; s. c. 40 N. W. 482. These principles controlled the ruling. The village was not by the act made a separate village, but remained a part of the town. The town constituted the taxing-district, and the legislature had full power to establish taxing-districts, and the courts can not question the justice or injustice of the limits thereof when fixed by the legislature. See also, Teegarden v. City of Racine, 56 Wis. 545; s. c. 14 N. W. 614; Dickson v. City of Racine, 61 Wis. 545, 549; s. c. 21 N. W. 620; T. B. Scott Lumber Co. v. Oneida Co., 72 Wis. 158; s. c. 39 N. W. 343; State v. Board &c., 70 Wis. 485; s. c. 36 N. W. 396.

[89] Brenham v. German-American Bank, 144 U. S. 173; s. c. 12 S. Ct. 559; rev'g s. c. 35 Fed. 185.

[90] St. Laws Tex. 1873, ch. 2, art. 3, § 2; Brenham v. German-American Bank, 144 U. S. 173; s. c. 12 S. Ct. 559; overruling Rogers v. Burlington, 3 Wall. 654, and Mitchell v. Burlington, 4 Wall. 270.

ration to borrow money to enable it to execute the power expressly conferred upon it by law, if existing at all, did not authorize it to create and issue negotiable securities to be sold in the market and to be taken by the purchaser freed from the equities that might be set up by the maker.[91] The provision in the charter of Chattanooga, Tenn., that the corporation "shall have full power to borrow money on its bonds," etc., did not authorize it to issue warrants on the treasurer or city scrip for the purpose of raising money for the ordinary expenses of the corporation.[92]

[91] Merrill v. Monticello, 138 U. S. 673; s. c. 11 S. Ct. 441. The court further said:—"It is admitted that the power to borrow money, or to incur indebtedness, carries with it the power to issue the usual evidences of indebtedness by the corporation to the lender or other creditor. Such evidences may be in the form of promissory notes, warrants, and perhaps, most generally, in that of a bond. But there is a marked legal difference between the power to give a note to a lender for the amount of money borrowed, or to a creditor for the amount due, and the power to issue for sale, in open market, a bond, as a commercial security, with immunity in the hands of a bona fide holder for value from equitable defenses." The court cited and approved Police Jury v. Britton, 15 Wall. 566; Claiborne Co. v. Brooks, 111 U. S. 400; s. c. 4 S. Ct. 489; Kelley v. Milan, 127 U. S. 139; s. c. 8 S. Ct. 1101; Young v. Clarendon Tp., 132 U. S. 340; s. c. 10 S. Ct. 107; Hill v. Memphis, 134 U. S. 198, 203; s. c. 10 S. Ct. 562. In this last case the court said:—"The inability of municipal corporations to issue negotiable paper for their indebtedness, however incurred, unless authority for that purpose is expressly given or necessarily implied for the execution of other express powers, has been affirmed in repeated decisions of this court." See also, Concord v. Robinson, 121 U. S. 165; s. c. 7 S. Ct. 937; Norton v. Dyersburg, 127 U. S. 160; s. c. 8 S. Ct. 1111. The case of Dwyer v. Hackworth, 57 Tex. 245, was distinguished by the court's referring to the fact that the supreme court of Texas, while reversing the court below, said that it could not enjoin the collection of the taxes on the ground of the invalidity of these same bonds without making the holders of those bonds parties to the suit, and citing Board v. Texas &c. R. Co., 46 Tex. 316; and then the United States supreme court say:—"There was, therefore, no adjudication in that case as to the validity of the bonds, and the remark of the court that the city borrowed money by selling its bonds to the amount of $15,000 is of no force on the question of the validity of the bonds," and cite Lewis v. City of Shreveport, 108 U. S. 282; s. c. 2 S. Ct. 634. Cities have no power to incur debts and issue negotiable instruments unless specially authorized to do so by their charters, or by statute, or the power to do so is clearly implied from some power expressly given, which can not fairly be exercised without it: Watson v. City of Huron, 97 Fed. 449; s. c. 38 C. C. A. 264. The city may execute a note for a just and legal indebtedness: City of Mineral Wells v. Darby (Tex. Civ. App.), 51 S. W. 351.

[92] Colburn v. Mayor &c. (Tenn.), 17 Am. L. Reg. 191, the court ordering perpetual injunction against the officers issuing such paper. The court said:—"If there be not money

§ 577. **As to trusts.**—In the absence of an express grant of power, a municipal corporation can not accept and hold property upon a purely private trust.[93] Under its charter power to "receive in trust and control for the purpose of such trust all money or other property * * * bestowed upon such corporation * * * for the general purposes of education," it has been held that the city of Baltimore could take in trust property given it by will "to establish a chair in the McDonogh Educational Fund and Institute, * * * to promulgate such a course of instruction in said institute as will aid in the practical application of the mechanical arts, * * * to give boys in that institution such useful and practical mechanical education as will enable them to gain a livelihood by skilful manual labor."[94] Aside from this provision in its latest charter, the court declared that according to the great weight of authority the corporation would seem to be entirely capable of taking property in trust for purposes germane to the objects of the corporation or which would promote, aid or assist in carrying out or perfecting those objects.[95] There is no statute law

in the treasury, then the corporation should borrow, as provided in the charter or by existing law, or they should levy and collect such tax as is necessary to raise whatever sum is needed, and if they can neither borrow nor raise the money by taxation to meet their expenditures, then they should cease their expenditures until they can thus realize according to law."

[93] In re Franklin's Estate, Appeal of Gillespie, 150 Pa. St. 437; s. c. 24 Atl. 626. The court said:—"Instances are not wanting in which municipal corporations have executed trusts committed to them by private persons, germane to the objects of the corporation, and they have been upheld for that reason." See also, Philadelphia v. Fox, 64 Pa. St. 169 (comment of Sharswood, J., on Corporation &c. of Gloucester v. Osborn, 1 H. L. Cas. 272, in which it was said that a municipality may take and hold for purposes altogether private); Mayor v. Elliott, 3 Rawle (Pa.) 170. A town may act as a trustee of a charitable bequest and execute the trust: Higginson v. Turner, 171 Mass. 586; s. c. 51 N. E. 172. A city may take a devise in trust for religious societies without regard to denomination: Phillips v. Harrow, 93 Iowa 92; s. c. 61 N. W. 434. A devise of land to a city was legal in South Carolina after 1872; McIntosh v. City of Charleston, 45 S. C. 584; s. c. 23 S. E. 943. In Pennsylvania a municipal corporation is capable of taking and holding property under a will and capable of acting as trustee for public purposes germane to the purposes of its creation: Handley v. Palmer, 91 Fed. 948.

[94] Barnum v. Mayor &c., 62 Md. 275.

[95] 2 Kent Com. 280; 2 Dillon Munic. Corp. (4th ed.), § 716. See also, Jackson v. Hartwell, 8 Johns. (N. Y.) 422; Green v. Rutherforth, 1 Ves. Sr. 462; Trustees &c. v. King, 12 Mass. 546; Pickering v. Shotwell, 10 Barr (Pa.) 23, 27; Chambers v. City of St. Louis, 29 Mo. 543; Executors &c. v. Murdoch, 15 How. 367; State v. Executors &c., 8 La. An. 171; Girard v. City of New Orleans, 2 La. An. 898; Vidal v. Mayor &c., 2

of New York which can be construed to give a municipal corporation the right to hold lands in trust for pious uses or for religious purposes.[96] A municipal corporation can not, in the absence of statute, accept a testamentary trust to establish and maintain a poorhouse for the support of the poor of the county.[97]

§ **578. Purchase at tax sales.**—A city having power under its charter to purchase property within or without its borders can purchase land for non-payment of taxes levied by the city.[98] Where a statute gives the power to make such purchase, a municipality must strictly pursue its statutory authority. It is confined to the express provision of the statute conferring the power; and where there is no authority for it to purchase jointly with another person, a tax deed, from which it appears that land was sold to the municipality and a private individual, has been held void.[99] So, where a city charter limits to fifty years the terms for which lands should be sold to the city for taxes and the city took such lands for nine hundred years, the title was held to be void; but if the tax was lawful, the landowner must pay the tax with interest as the condition of a decree in his favor in a proceeding to set aside or annul the deed.[100] Per contra: It has been said by the supreme court of Illinois that since municipal corporations can only exercise such powers as are expressly conferred, or as arise by implication from general powers granted, the charter power of a

How. 127; Girard v. Philadelphia, 7 Wall. 1; Perin v. Carey, 24 How. 465; Bell Co. v. Alexander, 22 Tex. 350; Columbia Bridge Co. v. Kline, Bright. (Pa.) 320; Miller v. Lerch, 1 Wall. Jr. 210; Webb v. Neal, 5 Allen (Mass.) 575; Oxford &c. Society v. West &c. Society, 55 N. H. 463; Sargent v. Cornish, 54 N. H. 18; Cresson's Appeal, 30 Pa. St. 437.

[96] Village of Corning v. Rector &c., 33 N. Y. St. 766; s. c. 11 N. Y. S. 762. In In re Underhill's Will, 3 N. Y. S. 205; s. c. 6 Dem. Sur. (N. Y.) 466, it was held that a town can not receive a bequest to be devoted under certain conditions to the erection of a town hall, inasmuch as § 2 of revised statutes of New York, p. 337, provides that no town shall possess or exercise any corporate powers except as enumerated, and § 1 limits the power of towns in purchasing and holding lands or personal property to such as may be necessary to the exercise of corporate or administrative powers.

[97] City Council v. Walton, 77 Ga. 517.

[98] Keller v. Wilson, 90 Ky. 350; s. c. 14 S. W. 332. The court said:—"This [the provision in the charter] should be construed to mean for governmental purposes; but in purchasing it for its taxes it was executing such a purpose, and, in our opinion, no valid distinction can be drawn between a purchase by the city at a sale for taxes under a levy by its collecting officer and under a decretal sale for a like purpose."

[99] Sprague v. Coenen, 30 Wis. 209.

[100] Baldwin v. City of Elizabeth, 42 N. J. Eq. 11; s. c. 6 Atl. 275. See also, In re Report of Commissioners &c., 49 N. J. L. 488; s. c. 10 Atl. 363; 23 Am. & Eng. Corp. Cas. 484.

corporation to buy and hold real property should be understood to include purchases made in the ordinary way, and not a tax sale.[101] In Indiana it has also been held that there could be no purchase at a sale for taxes due by the corporation without express power conferred by statute, and that it could not bind itself by an agreement to warrant the title of a purchaser at such sale.[102] Such a sale to a corporation had before been held void in Wisconsin.[103] A power to sell lands for taxes imposed upon such lands does not authorize selling of lands for taxes imposed upon the owners or occupants merely, and not upon their lands.[104]

§ 579. **Granting exclusive franchises.**—A village has no power to grant an exclusive franchise so as to disable itself for the period of thirty years from establishing for itself a system of water-works, under a power to provide for and control the erection of water-works, and to grant the right to one or more private companies to erect water-works to supply such village and the inhabitants with water, etc.[105]

[101] City of Champaign v. Harmon, 98 Ill. 491.

[102] City of Logansport v. Humphrey, 84 Ind. 467.

[103] Knox v. Peterson, 21 Wis. 247. In Bruck v. Broesigks, 18 Iowa 393, Lowe, J., has given the following reason for denying such powers to counties and municipal corporations generally:—"The relations which counties or municipal corporations sustain to the state and their own inhabitants is of a fiduciary nature. The duties required and the responsibilities imposed in the matter of assessing and collecting taxes are such as to render it inexpedient, not to say unwise, and against the purpose and the policy of the revenue law of the code of 1851 (under which the land in controversy was sold for taxes), to allow counties to traffic in the purchase and sale of tax titles in the absence of an express statute authorizing the same. They are intermediate agencies between the state and the people, created for civil and political purposes; and whilst it would be competent for counties to buy and hold real estate as a means to an end in effecting or carrying out the objects of their creation, it would not be within the scope of their powers to buy and sell delinquent lands at tax sales as a mere pecuniary operation."

[104] Sharp v. Speir, 4 Hill (N. Y.) 76.

[105] Long v. City of Duluth, 49 Minn. 280; s. c. 51 N. W. 913. The court said:—"If there is any ambiguity or reasonable doubt, arising from the terms used by the legislative or granting body, as to whether an exclusive franchise has been conferred or authorized to be conferred, the doubt is to be resolved against the corporation or individual claiming such a grant. Public policy does not permit an unnecessary inference of authority to make a contract inconsistent with the continuance of the sovereign power and duty to make such laws as the public welfare may require." On this point see also, Nash v. Lowry, 37 Minn. 261, 263; s. c. 33 N. W. 787; Proprietors &c. v. Proprietors &c., 11 Pet. 420, 443, 444; Minturn v. Larue, 23 How. 435; Wright v. Nagle, 101 U. S. 791, 796; Fanning v. Gregoire, 16 How. 524 (where it was held that

The fact that the law in another section provides that every grant to a private company of the right to erect water-works shall provide for the sale of such works to the village after fifteen years does not affect this construction of the law, as it merely requires that the right

the earlier grant of a ferry franchise was not exclusive, and, although "no court or board of county commissioners" [they having been prohibited by the act granting the first] could subsequently grant another franchise, the legislature could do it, or empower the city of Dubuque to do so, thus sustaining a subsequent ferry franchise granted by the city under its charter powers); Richmond Co. &c. Co. v. Town of Middletown, 59 N. Y. 228 (holding that a legislative act authorizing a town to cause its streets to be lighted with gas and to enter into a contract with the gas company for that purpose did not confer power to make an absolute contract for a term of years; that the legislature could not thus be deprived of its power to subsequently legislate upon the subject, and its repeal of the authority to light with gas was effectual to terminate the contract so made); Syracuse Water Co. v. City of Syracuse, 116 N. Y. 167; s. c. 22 N. E. 381. The state in its sovereign capacity may grant an exclusive franchise which amounts to a monopoly which will be protected against a subsequent conflicting grant: Saginaw Gaslight Co. v. City of Saginaw, 28 Fed. 529; New Orleans Gaslight Co. v. Louisiana &c. Mfg. Co., 115 U. S. 650; s. c. 6 S. Ct. 252; Louisville Gas Co. v. Citizens' Gaslight Co., 115 U. S. 683; s. c. 6 S. Ct. 265. But in the absence of legislative power vested in the municipality, so to do, it can not grant a monopoly: Saginaw Gaslight Co. v. City of Saginaw, supra; State v. Cincinnati Gas &c. Co., 18 Ohio St. 262, 293. A grant of an exclusive franchise is a monopoly and can be exercised only by the sovereign power of the state. A city council has no authority to grant to any one a monopoly, even where no express prohibition is found in the charter, or other legislative act: Los Angeles Water Co. v. City of Los Angeles, 88 Fed. 720; Illinois Trust &c. Bank v. City of Arkansas City, 76 Fed. 271, 279; s. c. 22 C. C. A. 171. The grant of an exclusive franchise is not an indispensable, or even an appropriate means to the procurement of water, and, besides, creates a monopoly, and upon this ground many courts hold such grants to be void: Los Angeles Water Co. v. City of Los Angeles, 88 Fed. 720. The state may delegate to a municipality the power to grant a street-railway franchise and the granting of such franchise by the council is the act of the state: City R. Co. v. Citizens' St. R. Co., 166 U. S. 557; s. c. 17 S. Ct. 653. The common council has no right to authorize a railroad company to erect a building upon the batture in front of riparian property on a public river within the city limits for 99 years: Louisiana Const. &c. Co. v. Illinois &c. R. Co., 49 La. An. 527; s. c. 21 So. 891. An ordinance granting greater rights than authorized may be valid to the extent authorized: City of St. Paul v. Chicago &c. R. Co., 63 Minn. 330; s. c. 68 N. W. 458. The city has no power to grant to certain drivers of vehicles the exclusive use of the streets: Pennsylvania Co. v. City of Chicago, 181 Ill. 289; s. c. 54 N. E. 825. The grant of a franchise is not exclusive unless so specified: Jackson Co. &c. R. Co. v. Interstate &c. R. Co., 24 Fed. 306. See Citizens' Gas &c. Co. v. Town of Elwood, 114 Ind. 332; s. c. 16 N. E. 624.

to purchase shall be a condition of the grant, but imposes no requirement or duty to purchase, and does not justify the inference that the village could only provide itself with water-works by purchasing from the company.[106] A water company was incorporated in 1860 to supply the borough of Easton with water. In 1867 the borough was authorized to construct water-works and to purchase the works of any existing company. This authority became effectual in 1881, being approved by a popular vote. The water company in the meanwhile had accepted the benefits of an act of 1874 which declared that "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one, and no other company shall be incorporated for that purpose" until the corporation should have realized profits to a specified amount. It was held that the franchise was exclusive only as respects other companies, and that the borough was not prohibited from supplying water by works constructed by itself, even though that might impair the value of the franchise of the water company.[107]

§ **580. The same subject continued.**—It was held that the granting of the exclusive privilege of supplying a city with water "from the Three-mile Creek" did not prevent a subsequent grant of a right to supply water from another source.[108] Under authority to a municipal corporation to cause its streets to be lighted and to make reasonable regulations with reference thereto, it is empowered to enter into a contract to accomplish that end, but it has no authority to thus confer an exclusive right to furnish gas for a period of thirty years.[109] A city was empowered by its charter to provide itself with water, and was deemed to be authorized to do so by contract. A water company was expressly authorized to contract with the city for that purpose, and a contract was entered into which the court deemed to have been intended to confer an exclusive right upon the company for a period of twenty-five years. It was held that the city had no such power.[110] The facts that a water company is required, when requested, to furnish water to a city for the extinguishment of fires, etc., and that such request has been made, and contracts entered into for that purpose between the company and the city, do not constitute a contract binding the city perpetually while the company retains its charter and

[106] Long v. City of Duluth, 49 Minn. 280; s. c. 51 N. W. 913. See also, Syracuse Water Co. v. City of Syracuse, 116 N. Y. 167, 187; s. c. 22 N. E. 381.

[107] Lehigh Water Company's Appeal, 102 Pa. St. 515.

[108] Stein v. Bienville Water &c. Co., 34 Fed. 145.

[109] Saginaw Gaslight Co. v. City of Saginaw, 28 Fed. 529.

[110] City of Brenham v. Brenham Water Co., 67 Tex. 542; s. c. 4 S. W. 143.

preventing the city from making contracts with others. The city could bind itself by such contracts only as it was authorized by statute to make. It has no power to grant exclusive privileges to put mains, pipes and hydrants in its streets, nor can it lawfully, by contract, deny to itself the right to exercise the legislative powers vested in its common council.[111]

§ 581. Contracts not exclusive.—A city has power to contract for a supply of gas or water for a stated period of time extending beyond the tenure of office of the individual members of the common council making such contract.[112] A contract by ordinance to pay for twenty-five years for the gas furnished by the lamps provided for therein and by those afterwards directed was upheld. The ordinance was construed to be a grant so far as it conferred upon the gas company the right to lay its mains and pipes in the public streets. But it was held that in that far it was in the nature of a license and not exclusive.[113]

[111] Syracuse Water Co. v. City of Syracuse, 116 N. Y. 167; s. c. 22 N. E. 381, sustaining the power of the city to authorize another water company to construct, maintain and operate water-works in the city, but not denying the right of the company first receiving the contract continuing to furnish. See also, Lehigh Water Co. v. Easton, 121 U. S. 388, 391; s. c. 7 S. Ct. 916; Mohawk Bridge Co. v. Utica &c. R. Co., 6 Paige (N. Y.) 554; Oswego Falls Bridge Co. v. Fish, 1 Barb. Ch. (N. Y.) 547; Thompson v. New York &c. R. Co., 3 Sand. Ch. (N. Y.) 625; Auburn &c. Plank Road Co. v. Douglass, 9 N. Y. 444, 452; Fort Plain Bridge Co. v. Smith, 30 N. Y. 44, 61; Power v. Village of Athens, 99 N. Y. 592; s. c. 2 N. E. 609; Dermott v. State, 99 N. Y. 101; s. c. 1 N. E. 242; Milhau v. Sharp, 27 N. Y. 611; Mayor &c. v. Second Ave. R. Co., 32 N. Y. 261; Gale v. Village of Kalamazoo, 23 Mich. 344; s. c. 9 Am. R. 80; Logan v. Pyne, 43 Iowa 524; s. c. 22 Am. R. 261; Des Moines Gas Co. v. City of Des Moines, 44 Iowa 505; s. c. 24 Am. R. 756; Norwich Gas Light Co. v. Norwich City Gas Co., 25 Conn. 19; State v. Cincinnati Gas &c. Co., 18 Ohio St. 262; Gas Co. v. Parkersburg, 30 W. Va. 435; s. c. 4 S. E. 650; Birmingham &c. St. R. Co. v. Birmington St. R. Co., 79 Ala. 465 (where it was held that neither the charter of the city of Birmingham nor the general statutes conferred on that corporation the power to grant, by ordinance in the nature of a contract, the exclusive franchise in perpetuity of running a street-railway through certain designated streets and avenues; and further, that if such power were granted to the corporation by its charter or public statute, it would be violative of the constitutional provision (Const. Ala., art. 1, § 23) against the passage of any law "making any irrevocable grant of special privileges or immunities"); City of Chicago v. Rumpff, 45 Ill. 90; Davis v. Mayor &c., 14 N. Y. 506.

[112] City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114; s. c. 31 N. E. 573. See also, City of Indianapolis v. Indianapolis &c. Co., 66 Ind. 396; City of Valparaiso v. Gardner, 97 Ind. 1; s. c. 49 Am. R. 416.

[113] City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114; s. c. 31 N. E. 573. See also, Crowder v.

Nor was a monopoly of supplying the city with gas for street-lighting given by such contract, there being nothing in the ordinance preventing the city from taking gas from others.[114] Had the ordinance contained a provision by which the city agreed to take gas from no other company, or prohibiting any other company from engaging in the business of making and selling gas, the cases mentioned in the note would be in point.[115] The arrangement provided by the ordinance being purely a business matter there was no surrender by the council of any legislative power.[116] The statute which authorized the common councils of cities to contract for light for its streets and alleys for a period not exceeding ten years did not affect this contract. By the same act existing contracts, except such as conferred exclusive privileges, were declared valid. This one was held not to be exclusive.[117]

§ **582. Improvements generally.**—The charter of a city provided that, if sidewalks are not built within the prescribed period of time after notice, the city council may order the same to be done "at the expense of the lots adjoining." It has been held that a resolution of the council, after the expiration of the time fixed by the notice, directing the city recorder to advertise for bids to furnish the material and construct the walk, was a sufficient compliance with the charter provision. It was not necessary that they should have directed that the walks be built "at the expense of the lots" adjoining.[118] A provision in a city charter that the expense of constructing sidewalks in a certain contingency should be assessed against the "lots and parcels of land adjoining said sidewalks" was held to conform to the state constitution, which authorized and provided that such assessments might be made "upon the property fronting upon such improvements."[119] Under the code of North Carolina, relative to towns

Town of Sullivan, 128 Ind. 486; s. c. 28 N. E. 94; City of Rushville v. Rushville Natural Gas Co., 132 Ind. 575; s. c. 28 N. E. 853.

[114] City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114; s. c. 31 N. E. 573. Cf. Citizens' Gas &c. Co. v. Town of Elwood, 114 Ind. 332; s. c. 16 N. E. 624.

[115] Davenport v. Kleinschmidt, 6 Mont. 502; s. c. 13 Pac. 249; and cases collected in In re Union Ferry Co., 98 N. Y. 139, 150.

[116] City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114; s. c. 31 N. E. 573, as to its being purely a business power. See also, in addition to cases supra, Dillon Munic. Corp. (4th ed.), §§ 608, 609; New Orleans &c. Co. v. City of New Orleans, 42 La. An. 188; s. c. 7 So. 559.

[117] City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114; s. c. 31 N. E. 573. See also, cases supra; Louisville Gas Co. v. Citizens' &c. Co., 115 U. S. 683; s. c. 6 S. Ct. 265.

[118] Scott Co. v. Hinds, 50 Minn. 204; s. c. 52 N. W. 523.

[119] Scott Co. v. Hinds, 50 Minn. 204; s. c. 52 N. W. 523.

and cities, providing that the commissioners or aldermen may cause necessary improvements to be made, and "apportion them equally among the inhabitants by assessments," a city authorized by its charter to charge abutting owners with the cost of improvements may apportion them according to the front-foot rule, though the charter is silent as to the method of apportionment.[120] An amendment to the charter of a city providing that the common council should not take stock "in any public improvement, or effect a loan for any purpose, without first obtaining the consent of the people at an election held for that purpose," can not be extended to improvements other than municipal in their character. The legislature did not intend to invest the city with authority to embark in speculative enterprises of improvement.[121] For like reasons a city charter was construed not to authorize the levying and collection of a tax for making a survey of a railroad-route from that city to another.[122] It has been held that although an act empowering a county to improve the navigation of a navigable stream, and to issue bonds, the proceeds of which were to be applied for such purpose, might not provide any means or method for paying the principal and interest on the bonds, such fact was not a good objection to the validity of the act or to the issue of the bonds thereunder, nor was the fact that such provision might not be otherwise made.[123]

§ **583. Cost of improvements.**—When municipal corporations seek to impose upon property-owners the burden of the cost of street-improvements, and to hold the property of abutting owners liable therefor, the statute or charter authorizing such improvements to be made must be strictly pursued.[124] Under the Dakota statute, which grants the powers in this respect to cities, the resolution adopted and published must specifically designate the work declared necessary to be

[120] City of Raleigh v. Peace, 110 N. C. 32; s. c. 14 S. E. 521.

[121] Low v. Mayor &c., 5 Cal. 214, where it was held the city under that provision had no power to subscribe to stock in a steam navigation company.

[122] Douglas v. Mayor &c., 18 Cal. 643. That a railroad extending from the city was as much of a means of municipal benefit as a street in the city, gas- or waterworks, does not meet the requirements of this case. It was not a work which the charter authorized.

[123] Stockton v. Powell, 29 Fla. 1; s. c. 10 So. 688.

[124] Mason v. City of Sioux Falls, 2 S. D. 640; s. c. 51 N. W. 770; 2 Desty Taxation 1241; 2 Dillon Munic. Corp., § 769; 1 Blackwell Tax Titles, § 612; Merritt v. Village of Port Chester, 71 N. Y. 309; Hewes v. Reis, 40 Cal. 255; McLauren v. City of Grand Forks, 6 Dak. 397; s. c. 43 N. W. 710; White v. City of Saginaw, 67 Mich. 33; s. c. 34 N. W. 255; Hoyt v. City of East Saginaw, 19 Mich. 39; Pound v. Supervisors &c., 43 Wis. 63.

done, and property-owners and the property will only be liable for the cost of such improvements as are specifically designated in the resolution and published in the official paper.[125] But owners of property abutting upon a street that has been used by the public as a street for a number of years can not defeat the city in enforcing the collection of street-assessments for the cost of improving such street on the ground that the title to such street or some part of it is not in the city.[126]

§ 584. **Gas and water supply.**—A charter of an electric-light company authorizing it to "furnish any city * * * with gas, * * * etc.," and the charter of a city giving it power to control and its board of councilmen power "to construct, maintain and operate gas- and water-works, and to pass all ordinances necessary to regulate the same, "have been held to authorize a contract between the two as to lighting the city by gas, electricity, or any other mode.[127] Under the power to make all needful police regulations for the welfare, convenience and safety of its citizens, the power to light the streets of a city may be lawfully exercised, and the council may purchase and operate an electric-light plant for that purpose.[128] Authority in a city to make a permanent and exclusive contract with a water company to build water-works and supply it with water can not be implied from the general power conferred by its charter to contract for the needs of the municipality.[129] The city of New Orleans was held to have the power to contract for a water supply under the provisions of its charter: and having this power to contract, it was held that the price,

[125] Mason v. City of Sioux Falls, 2 S. D. 640; s. c. 51 N. W. 770.

[126] Mason v. City of Sioux Falls, 2 S. D. 640; s. c. 51 N. W. 770, laying down this rule as to evidence required on the part of the city:—"It is sufficient for the city to show that the street, avenue or alley sought to be improved is one that has, for a considerable length of time, been used as a public street and is such property as can be appropriated by the city, and is, in the language of Chief Justice Shaw in Hobbs v. Inhabitants &c., 19 Pick. (Mass.) 405, a street de facto." See also, as to uses of the street by the city, and what amounts to a dedication, Elliott Roads & Streets (2d ed.), §§ 123, 162, 163; President &c. v. White's Lessees, 6 Pet. 431; Jarvis v. Dean, 3 Bing. 447; Case v. Favier, 12 Minn. 89; Hobbs v. Inhabitants &c., 19 Pick. (Mass.) 405; City of Chicago v. Wright, 69 Ill. 318; Cemetery Ass'n v. Meninger, 14 Kan. 312; 2 Dillon Munic. Corp., § 638 and cases cited; 2 Greenleaf Evidence, § 662. As to estoppel of owner of land, see Holmes v. Village of Hyde Park, 121 Ill. 128; s. c. 13 N. E. 540; Village of Hyde Park v. Borden, 94 Ill. 26.

[127] City of Newport v. Newport Light Co., 89 Ky. 454; s. c. 12 S. W. 1040.

[128] Mauldin v. City Council &c., 33 S. C. 1; s. c. 11 S. E. 434.

[129] Greenville Water Works Co. v. City of Greenville (Miss.), 7 So. 409.

the kind of water, and the amount, were matters of legislative discretion vested in the city council; and that when the city confined itself within the limits of its power to contract, this legal discretion exercised by the city council would not be inquired into by the courts in the absence of fraud and corrupt and extravagant legislation.[130] Under the general statutes of Kansas, cities of the second class have the right to provide for supplying themselves and their inhabitants with water by granting the privilege of furnishing water to a person, natural or artificial.[131] A charter which enumerates among the powers of a city one "to provide the city with water by water-works" authorizes the corporation to furnish the inhabitants of the city with water.[132] Power conferred by the legislature upon a common council to prescribe regulations for the laying of gas-pipes through the streets can not be delegated; and a resolution authorizing all companies to lay pipes upon such conditions as may be prescribed by the mayor, comptroller and commissioner of public works confers no authority on the latter and their permits are void.[133] Under a general power to contract a city may incur indebtedness for the construction of water-works and issue bonds therefor.[134] And it has even been held that a city has inherent power to build water-works.[135] A charter which authorizes bonds for water and light may issue bonds for a water plant alone.[136] The question of necessity for water-works will not be inquired into by courts.[137] The legislature may regulate

[130] Conery v. New Orleans Water Works Co., 41 La. An. 910; s. c. 7 So. 8. See also, Mayor &c. v. Cabot, 28 Ga. 50; Wells v. Mayor &c., 43 Ga. 67; Watson v. Turnbull, 34 La. An. 856; Pickles v. Dry Dock Co., 38 La. An. 412.

[131] Burlington Water Works Co. v. City of Burlington, 43 Kan. 725; s. c. 23 Pac. 1068. See also, Wood v. National Water Works Co., 33 Kan. 590, 597; s. c. 7 Pac. 233.

[132] Smith v. Nashville, 88 Tenn. 464; s. c. 12 S. W. 924. The court said:—[In exercising its authority the city could not be held to be] "engaging in a private enterprise or performing a municipal function for a private end. It is the use of corporate property for corporate purposes in the sense of the revenue law of 1887," and, therefore, it may not be liable for a privilege tax. See also, as to liability for taxes, Town of West Hartford v. Board &c., 44 Conn. 361; City of Rochester v. Town of Rush, 80 N. Y. 302; City of Louisville v. Commonwealth, 1 Duv. (Ky.) 295; In the Matter of the Appeal of Des Moines Water Company, 48 Iowa 324.

[133] Anderson v. Equitable Gas Light Co., 12 Daly (N. Y.) 462. See also, Thompson v. Schermerhorn, 6 N. Y. 92; Tappan v. Young, 9 Daly (N. Y.) 357; Birdsall v. Clark, 73 N. Y. 73; Index, tit. Delegation of Powers.

[134] Heilbron v. Mayor &c., 96 Ga. 312; s. c. 23 S. E. 206.

[135] Gas &c. Co. v. Borough of Downingtown, 175 Pa. St. 341; s. c. 34 Atl. 799.

[136] Janeway v. City of Duluth, 65 Minn. 292; s. c. 68 N. W. 24.

[137] Janeway v. City of Duluth, 65

the rates at which water shall be supplied by a private corporation.[138] Power to provide for lighting streets implies power to maintain an electric-lighting system.[139] The power given to a municipality to make and vend gas carries with it the right to fix the price.[140] And so where the grant is to supply the city with water it includes the power to fix the price. Power to light by gas, or in any other manner, is authority for an electric-light plant,[141] but it does not convey power to furnish electric lights to private houses.[142] A city has no power to compel an assignee to furnish gas at less than the rate fixed in its consent to the assignment of the franchise, the latter providing that the assignee shall furnish at a price not to exceed a specified rate.[143]

§ **585. Natural-gas companies.**—"An act empowering cities and towns within the state * * * to regulate the supply, consumption and distribution of natural gas therein, and declaring an emergency," has been held to authorize, not merely such regulations as conduce to safety, but to confer full power to regulate the supply, distribution and consumption of natural gas, including the power to fix reasonable maximum rates that may be charged to consumers.[144]

Minn. 292; s. c. 68 N. W. 24. A house of correction under Detroit city charter not entitled to supply of water free of expense: City of Detroit v. Board &c., 108 Mich. 494; s. c. 66 N. W. 377. Power of commissioner of public works to cut electric wires under N. Y. laws of 1884, ch. 534; Laws 1885, ch. 499; Laws of 1887, ch. 716,—see Electric Power Co. v. Mayor &c., 60 N. Y. S. 590; s. c. 29 Misc. (N. Y.) 48.

[138] City of Danville v. Danville Water Co., 180 Ill. 235; s. c. 54 N. E. 224.

[139] Christensen v. City of Fremont, 45 Neb. 160; s. c. 63 N. W. 364.

[140] State v. Laclede Gas-Light Co., 102 Mo. 472, 485; s. c. 14 S. W. 974; 15 S. W. 383.

[141] Jacksonville Elec. Light Co. v. City of Jacksonville, 36 Fla. 229; s. c. 18 So. 677.

[142] Village of Ladd v. Jones, 61 Ill. App. 584.

[143] In re Pryor, 55 Kan. 724; s. c. 41 Pac. 958. Under Wash. Act 1890 the city can not regulate the price of gas: Tacoma Gas &c. Co. v. City of Tacoma, 14 Wash. 288; s. c. 44 Pac. 655. Municipalities have power to make contracts for street lighting: State v. Board &c., 57 N. J. L. 588; s. c. 31 Atl. 454.

[144] City of Rushville v. Rushville Natural Gas Co., 132 Ind. 575; s. c. 28 N. E. 853. This construction was based upon the title and the intention of the legislature. The court said:—"We can not think that it was the purpose of the legislature to leave municipal corporations absolutely without power of control or regulation over the holders of such franchises [using the streets for the supply of natural gas], except as they may be able to reach and control them in the exercise of their implied police powers. To give to the statute such construction would be to say that after such franchises have been acquired, no matter what conduct their holders may be guilty of tending to the discomfort or in-

Where an owner of property devotes it to a use in which the public have an interest, he must to the extent of the interest thus acquired by the public submit to the control of such property by the public for the common good.[145] The supreme court of Ohio, applying the doctrine just stated on the subject of regulating prices, said: "Because prior to any legislation on the subject it [a gaslight company] may have possessed the common-law right of fixing its own prices, it does not place it beyond the reach of any legislative control on the subject whenever in the interest of the public good it becomes necessary that such control should be had."[146] The only restriction upon the right to fix maximum prices which follows the right to control, and which is delegated by statute to the municipality, is some provision in the charter or grant of the license which amounts to a contract.[147] Where a corporation fails to have a stipulation from the municipality reserving to itself the right to regulate its charges, or otherwise to contract for a restraint of the powers of the city, it acts in full view of the power of the city to regulate its prices by fixing a maximum and is bound by an ordinance on the subject.[148] A provision in an ordinance that natural-gas companies shall supply all individuals along their lines requiring it, on payment or reasonable security, is valid, and within the power of a city to impose by ordinance.[149]

§ 586. **Establishment of electric plant.**—Under a general authority to establish electric-light plants a city may erect an electric plant for the purpose of furnishing light to its inhabitants in their stores and houses as well as for lighting the streets and public places of the city.[150] In upholding a similar power in a city under a statute,[150a]

convenience of the citizen, and no matter how extortionate they may be, unless their acts tend to endanger the safety, or otherwise come within the purview of the inherent police powers of the municipality, there is no remedy, as the legislature has left them independent of municipal supervision."

[145] Munn v. Illinois, 94 U. S. 113; Hockett v. State, 105 Ind. 250; s. c. 5 N. E. 178.

[146] Zanesville v. Gas Light Co., 47 Ohio St. 1; s. c. 23 N. E. 55.

[147] Munn v. Illinois, 94 U. S. 113; Chicago &c. R. Co. v. Iowa, 94 U. S. 155; Peik v. Chicago &c. R. Co., 94 U. S. 164.

[148] City of Rushville v. Rushville Natural Gas Co., 132 Ind. 575; s. c. 28 N. E. 853.

[149] City of Rushville v. Rushville Natural Gas Co., 132 Ind. 575; s. c. 28 N. E. 853.

[150] So held in Thompson-Houston Electric Co. v. City of Newton, 42 Fed. 723. The court said:—"It has been the uniform rule that a city in erecting gas-works or water-works is not limited to furnishing gas or water for use only upon the streets and other public places of the city, but may furnish the same for private use; and the statutes of Iowa now place electric-light plants in the same category."

[150a] Elliott's Supp. Ind. 1889, § 794 et seq. (Burns R. S. Ind. 1901,

the supreme court of Indiana said: "There can be little or no doubt that the power to light the streets and public places of a city is one of its implied and inherent powers, as being necessary to properly protect the lives and property of its inhabitants, and as a check on immorality."[151] Incidental to the ordinary powers of a municipal corporation, and necessary to a proper exercise of its functions, is the power of enacting sanitary regulations for the preservation of the lives and health of those residing within its corporate limits.[152] "It follows [from this principle]," continued the court in the Indiana case, "that to concede to municipal corporations the possession of such powers does not involve any extension, either by intendment or implication, of the powers expressly conferred by statute; but that by the act authorizing the organization of the corporation, the legislature expressly delegates to the municipality the power to take such steps as are necessary to preserve the health and safety (and we will add the property) of its inhabitants. The inference of the delegation of such

§§ 4301–4305). Section 4301 provides that the common council of a city shall have power to light its streets and public places with electric light and may contract with individuals or corporations for supplying such light. Section 4302 provides for the erection in the streets of necessary poles and appliances for supplying electric light to the inhabitants of the city. Section 4305 provides for the appropriation of lands and rights of way by corporations engaged in lighting the city or the public and private places for the inhabitants with electric light. Of such power the court, in City of Crawfordsville v. Braden, 130 Ind. 149; s. c. 28 N. E. 849, said: "The so-called inferred or inherent police powers of such corporations are as much delegated power as are those conferred in express terms, the inference of their delegation growing out of the fact of the creation of the corporation, and the additional fact that the corporation can only fully accomplish the objects of its creation by exercising such power. Special charters as well as general statutes for the incorporation of cities and towns usually contain a specific enumeration of powers granted to and which may be exercised by such corporations. In many cases the powers thus enumerated are such as would be implied by the mere fact of the incorporation. Where powers are thus enumerated in a statute which would belong to the corporation without specific enumeration, the specific statute is to be regarded, not as the source of the power, but as merely declaratory of a pre-existing power, or rather of a power which is inherent in the very nature of a municipal corporation, and which is essential to enable it to accomplish the end for which it was created. And the enumeration of powers, including a portion of those usually implied, does not necessarily operate as a limitation of corporate powers, excluding those not enumerated." See also, Clark v. City of South Bend, 85 Ind. 276; s. c. 44 Am. R. 13; First Nat. Bank v. Sarlls, 129 Ind. 201; s. c. 28 N. E. 434.

[151] City of Crawfordsville v. Braden, 130 Ind. 149; s. c. 28 N. E. 849.

[152] City of St. Paul v. Laidler, 2 Minn. 190.

powers follows inevitably and irresistibly, because their exericse is necessary to the accomplishment of the objects of the incorporation."[153]

§ **587. Public property.**—A patent was issued by the state of Illinois to the county commissioners conveying all the lots in a certain block known as the "Public Square" at Ottawa, on which a statute had directed the public buildings should be erected, "to aid in the erection of public buildings." It was held that the county commissioners, after using as much of such block for public buildings as they deemed necessary, might sell and convey the rest of it for the purpose of raising money to pay for such buildings.[154] Under an act authorizing a county to issue bonds for a building for a court-house, it has no authority to issue bonds for the erection of a jail and court-house combined which is to be permanently used as a jail and is to be used as a court-house only until a separate court-house should be built.[155] A statute authorizing the supervisor of a county to cause the commons to be surveyed and platted, and to lease the same for ninety-nine years, was held to apply to leases in possession only, and not in reversion or futuro; and a subsequent act giving to the person entitled to any portion of such title by an existing lease the right to acquire the fee by paying a certain sum, vested in the lessee a property-right which could not be disturbed or abridged by any future lease to another.[156] Under authority "to prevent and extinguish fires," a town may erect a fire-engine house, and, under its general authority to provide a suitable place for town business, may provide for a public hall over said house.[157]

[153] City of Crawfordsville v. Braden, 130 Ind. 149; s. c. 28 N. E. 849. This court referred to the Iowa statute involved in Thompson-Houston Electric Co. v. City of Newton, 42 Fed. 723, supra, and said:—"It will be observed that this [that] statute does not in terms confer any power not, in our opinion, as above stated, included among the implied powers of municipal corporations."

[154] Lyman v. Gedney, 114 Ill. 388; s. c. 29 N. E. 282.

[155] Nolan Co. v. State, 83 Tex. 182; s. c. 17 S. W. 823.

[156] Rutz v. Kehn, 143 Ill. 558; s. c. 29 N. E. 553.

[157] Clarke v. Inhabitants &c., 81 Mo. 503, where it was contended that the municipal corporation should be relieved from a condition to erect structures of certain kinds upon realty conveyed to it, and thus avoid a restoration of the property to the grantor on the ground of lack of power to perform the condition. See also, as to the power to erect the hall, State v. Haynes, 72 Mo. 377; Ketchum v. City of Buffalo, 14 N. Y. 356; Allen v. Inhabitants &c., 19 Pick. (Mass.) 485; Hardy v. Inhabitants &c., 3 Met. (Mass.) 163; Richardson v. Boston, 24 How. 188; Board &c. v. Woods, 77 Mo. 197. Where by charter a city council has power to erect necessary buildings it has authority to erect a city hall: Wright v. City of San Antonio

§ 588. The same subject continued.—The code of Iowa authorizes cities and towns to acquire lands for various municipal purposes, and provides that they shall have power "to dispose of and convey such lands if deemed unsuitable for the purposes for which they were purchased;" and also authorizes the purchase by a city of lands sold under execution, when the city has any interest in the proceeding, and empowers the corporation "to dispose of the property," or of any real estate or any interest therein, "in such manner and upon such terms as the city council shall deem just and proper." The provisions have been held not to confer upon a city the authority to donate land and buildings to the county in which they are situate in order to induce a relocation of the county seat in such city. Such authority could only exist by legislative grant.[158] So a statute declaring that when a piece or parcel of land held for public use shall not be needed for public use the land may be sold by the city, has been construed to refer to such property as is held by a city in full use and ownership, as the commons, in this instance, acquired by confirmation under various acts of congress, and not to apply to property which has been dedicated by the owner to the public use.[159] A deed of a homestead to a county is not invalid because the land was not acquired for any public purpose, such as a site for a court-house, jail, etc. This holding was in Texas, where the statutes[160] recognize the rights of counties to take title to and enjoy real estate without any limitation as to the purpose for which it shall be used.[161] The legislature may regulate the use of any property dedicated to a public use in a city, or promote its improvement, but can not divert or subject it to any use clearly inconsistent with the contract of dedication. The property or easement which a city has in its streets or public places is not private property in the sense that it can not be taken for a public use except upon just compensation; but it is public, and the power of regulating the use thereof, as such, resides in the legislature. The power is not, however, absolute, but is limited as above stated.[162] The authority of

(Tex.), 50 S. W. 406. Property held by a municipality for the purpose of furnishing its inhabitants with water is not held as a private corporation and the legislature may supervise the management at will: Coyle v. Gray, 7 Houst. (Del.) 44; s. c. 30 Atl. 728. Except for constitutional restrictions, legislative control over the property of municipal corporations held for public use is absolute: Potter v. Collis, 46 N. Y. S. 471; s. c. 19 App. Div. (N. Y.) 392.

[158] Brockman v. City of Creston, 79 Iowa 587; s. c. 44 N. W. 822.

[159] Cummings v. City of St. Louis, 90 Mo. 259; s. c. 2 S. W. 130.

[160] Rev. Stat. Tex., arts. 680–682.

[161] Scalf v. Collins Co., 80 Tex. 514; s. c. 16 S. W. 314.

[162] Portland &c. R. Co. v. City of

a municipality as such to donate the right of way for a railroad company other than through its streets, and appropriate money to pay for such right of way, does not exist under the constitution of Texas.[163]

§ **589. Parks.**—An act providing that cities acting under special charters may provide for the election of park commissioners who shall have exclusive power over public parks, and authorizing the councils of such cities to submit to a vote the question whether there shall be levied a tax for the purpose of purchasing real estate for parks and their improvement, has been held in Iowa not to divest the common council of the cities of power under the code, when such commissioners have not been elected, to "purchase or condemn and pay for out of the general fund lands for the use of public squares, streets and parks," and the necessity therefor is to be determined solely by the city.[164] A Minnesota statute providing for a system of public parks and parkways in Minneapolis was construed not to authorize the board created by it to vacate or close or exclude any class of vehicles from any street except such as might run through any tract of lands taken for a park, and it could not acquire that power over a street by merely widening it by acquiring title to a strip on each side.[165] But authority "to make rules for the use and government" of a park will sustain a rule forbidding all persons "to make orations, harangues or loud outcries" therein.[166] Where park commissioners have power to control and lay out parks it must be done in the manner prescribed by the charter and they have no power to close a street by resolution.[167] A lease of a building on park premises is not illegal where the lease is subject to such regulations as are or may be afterwards prescribed.[168]

Portland, 14 Or. 188; s. c. 12 Pac. 265, where a license by the legislature to a railroad company to use a levee or public landing for certain property was sustained as being in aid of the use to which this property had been dedicated by the grantor to the city.

[163] Const. of Texas, 1875, art. 10, § 9, and art. 11, § 3. So held in City of Cleburne v. Gulf &c. R. Co., 66 Tex. 457; s. c. 1 S. W. 342.

[164] In re City of Cedar Rapids, 85 Iowa 39; s. c. 51 N. W. 1142.

[165] State v. Waddell, 49 Minn. 500; s. c. 52 N. W. 213.

[166] Commonwealth v. Abrahams, 156 Mass. 57; s. c. 30 N. E. 79.

[167] Holtz v. Diehl, 56 N. Y. S. 841.

[168] Gushee v. City of New York, 58 N. Y. S. 967; s. c. 42 App. Div. (N. Y.) 37. Park commissioners of Buffalo are not precluded from using money granted for repairs for the construction of a speedway where they have power to improve and make repairs: Holtz v. Diehl, 56 N. Y. S. 841. Under laws of 1893 and the charter of Greater New York the department of public parks have no right to prohibit the use of speedways by equestrians nor the use of driveways by carriages in the absence of evidence that the latter would injure the driveway or render it unfit or inconvenient for the pur-

§ **590. Wharves.**—A municipal corporation may, unless restricted by positive law, dedicate property irrevocably to public uses.[169] It may, under its power to regulate wharves, authorize the erection of a public grain-elevator upon a wharf so dedicated to public uses.[170] But it can not, without express authority from the legislature, by ordinance surrender to a private corporation its control of a public wharf for a fixed term, nor the right to regulate prices chargeable for such use.[171] A power to regulate them does not include the power to surrender control of them.[172] Authority conferred by charter upon a city "to purchase and hold real, personal and mixed property, and to dispose of the same for the benefit of the city," is limited to the purchase of such property as may be necessary for the purposes of the corporation, such as the house for the public offices and furniture to fit them up. It does not embrace power to subscribe for railway-stocks or to any other work of internal improvement. To do this, special authority from the legislature is required.[173]

§ **591. The same subject continued.**—A municipal corporation having, by its charter, an exclusive right to make wharves on the banks of a navigable river upon which it is situated, collect wharfage and regulate wharfage rates, can, consistently with the constitution of the United States, charge and collect from the owner of enrolled and licensed steamboats, which move and land at a wharf constructed by it, wharfage proportioned to their tonnage.[174]

pose for which it was created: Doll v. Devery, 57 N. Y. S. 767.

[169] Illinois &c. Canal Co. v. City of St. Louis, 2 Dill. 70; Board &c. v. Risley, 40 Mo. 356; Schools v. Risley, 10 Wall. 91.

[170] Illinois &c. Canal Co. v. City of St. Louis, 2 Dill. 70.

[171] Illinois &c. Canal Co. v. City of St. Louis, 2 Dill. 70.

[172] Illinois &c. Canal Co. v. City of St. Louis, 2 Dill. 70. See also, Davis v. Mayor &c., 14 N. Y. 506, 532; Milhau v. Sharp, 27 N. Y. 611; Goszler v. Corporation of Georgetown, 6 Wheat. 593, 597, where, in the language of Chief Justice Marshall, it is held that a municipal "corporation can not abridge its own legislative power."

[173] City of Wheeling v. Mayor &c., 1 Hughes 90.

[174] Packet Company v. Keokuk, 95 U. S. 80. The court said:—"It is a tax or duty that is prohibited [by the constitution]; something imposed by virtue of sovereignty, not claimed in right of proprietorship. Wharfage is of the latter character. Providing a wharf to which vessels may make fast, or at which they may conveniently load or unload, is rendering them a service. The character of the service is the same whether the wharf is built and offered for use by a state, a municipal corporation or a private individual; and when compensation is demanded for the use of the wharf, the demand is an assertion, not of sovereignty, but of a right of property." Cf. Cannon v. New Orleans, 20 Wall. 577, where the court carefully guarded the right to exact wharfage. Any

§ 592. **Markets.**—An ordinance prohibiting the keeping of a private market within six blocks of a public market is a valid exercise of the power to "regulate" private markets.[175] The authority of a city to provide for the inspection and to regulate the sale of meats and other things does not give power to tax for revenue the occupation of selling them, but justifies such fees and charges as will cover the expense of inspection and police supervision.[176] And under such authority a city may prohibit the sale of such articles except at markets duly established under its power to establish and regulate markets.[177]

law or ordinance savoring of a tax on tonnage, though ostensibly passed to collect wharfage, has been held prohibited. See also, Northwestern Packet Co. v. St. Paul, 3 Dill. 454 (where an ordinance imposing a wharfage tax each trip upon every boat and vessel loading or anchoring, etc., was held in conflict with the constitution and void. Nelson, J., said:—"It is not a charge for the use of a wharf, but for the privilege of arriving at and departing from the port"); Steamship Co. v. Port Wardens, 6 Wall. 31 (where the statute imposing a tax upon every ship entering the port was held to be void, as "a regulation of commerce and a duty of tonnage,"—"a sovereign exaction, not a charge for compensation"); Peete v. Morgan, 19 Wall. 581 (holding a tax of the same character void); Northwestern &c. Packet Co. v. City of Louisiana, 4 Dill. 17, n.; Kennedy v. Corporation of Washington, 3 Cr. C. C. 595 (where it was held that the making of rules for the regulation of private wharves was discretionary, and that the commissioners could not be compelled to exercise the power).

[175] Natal v. Louisiana, 139 U. S. 621; s. c. 11 S. Ct. 636; affirming s. c. 42 La. An. 612; 1 So. 923. The court said:—"By the law of Louisiana, as in states where the common law prevails, the regulation and control of markets for the sale of provisions, including the places and the distances from each other at which they may be kept, are matters of municipal police, and may be in trusted by the legislature to a city council to be exercised as in its discretion the public health and convenience may require." Morano v. Mayor, 2 La. 217; First Municipality v. Cutting, 4 La. An. 335; City of New Orleans v. Stafford, 27 La. An. 417; Bush v. Seabury, 8 Johns. (N. Y.) 419; Village of Buffalo v. Webster, 10 Wend. (N. Y.) 99; Nightingale's Case, 11 Pick. (Mass.) 168; Commonwealth v. Rice, 9 Met. (Mass.) 253. Where a city has power to establish markets, it has power to prohibit the sale at, or near, such markets of articles for sale in such markets: City of New Orleans v. Kientz, 52 La. An. 950; s. c. 27 So. 344. The action of a city council in establishing a market is not subject to question on the ground of necessity: Miller v. Webster City, 94 Iowa 162; s. c. 62 N. W. 648. Power granted to regulate markets authorizes the prohibiting under a penalty the sale of fresh meat by retail during market hours at other places than those set apart for such purpose: Keck v. City of Cincinnati, 6 Ohio Dec. 97.

[176] City of Jacksonville v. Ledwith, 26 Fla. 163; s. c. 7 So. 885.

[177] City of Jacksonville v. Ledwith, 26 Fla. 163; s. c. 7 So. 885.

§ 593. **The same subject continued.**—A municipal corporation has the power to contract with an individual, to authorize him to build a market-house, rent stalls and collect dues during a specified period, with the consideration that the land, which is his property, and the improvements upon it, shall be conveyed to the city, and that the same at the expiration of the term, shall be turned over absolutely in good order to the corporation.[178] An act which gives to cities power "to provide for and regulate the inspection of meats, poultry," etc., and "to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease," does not confer power to establish a public slaughter-house for the purpose of securing proper inspection of fresh meats,[179] although under the special provisions of the statute, incorporated towns have power to prohibit slaughter-houses or any unwholesome business or establishment within the incorporation, and the common council by appropriate ordinance may regulate the location of any unwholesome business, and may cleanse, abate or remove the same.[180] The establishment and regulation of markets is the exercise of the police power of a city for the preservation of the health of its citizens.[181] But the legislature has not given to the city of New Orleans power to establish a market-bazaar as distinguishable from a market.[182] Under a charter which confers authority upon a city "to regulate the erection, use and continuance of market-houses," the city has power to pass an ordinance prohibiting the sale of fresh meats outside the market-house.[183] The exclusive police power over the whole subject of slaughtering animals within its corporate limits is delegated by the constitution of Louisiana[184] to the city of New Orleans, subject to

[178] State v. Natal, 41 La. An. 887; s. c. 6 So. 722 (the court based this decision on the city's charter giving it all the power necessary for a proper administration of a municipal government, and its recognized rights of establishing public markets); Moran v. Mayor, 2 La. 217; Cougot v. City of New Orleans, 16 La. An. 21; Weymouth v. City of New Orleans, 40 La. An. 344; s. c. 4 So. 218.

[179] Huesing v. City of Rock Island, 128 Ill. 465; s. c. 21 N. E. 558; reversing s. c. 25 Ill. App. 600 (the court holding that the general provision as to the promotion of health did not enlarge the power conferred by the special provisions of the statute which followed it, and the special powers conferred alone should be exercised); State v. Fergeson, 33 N. H. 424; 1 Dillon Munic. Corp. (2d ed.), § 250; City of Cairo v. Bross, 101 Ill. 475.

[180] Huesing v. City of Rock Island, 128 Ill. 465; s. c. 21 N. E. 558.

[181] City of New Orleans v. Morris, 3 Woods 103.

[182] City of New Orleans v. Morris, 3 Woods 103.

[183] Ex parte Canto, 21 Tex. App. 61; s. c. 17 S. W. 155.

[184] Const. La., art. 248, relates to regulating the slaughter of live animals.

no limitation except that imposed by the article of the constitution itself.[185]

§ 594. **Streets generally.**—Lands used as a private cemetery may be seized by a city under authority to enter on and condemn "any and all lands."[186] It would not have been authorized to take lands previously taken and devoted to a public purpose.[187] The cemetery land was devoted to a private and not a public use.[188] The construction of a sewer in a public street, if done in a lawful manner, is authorized; sewerage being one of the legitimate uses to which public streets may be devoted.[189] The word "building," used in a statute authorizing cities to improve streets by "macadamizing, building," etc., includes "paving," and such cities are not thereby restricted to macadamizing their streets, but may pave them with asphalt.[190] The provisions of a city charter as to the removal of obstructions from its streets gave comprehensive powers of quasi-legislative character to the common council, and extended to the cutting down and removal of shade trees which had been growing on the sidewalks.[191] A city has inherent power to construct or reconstruct sewers of all kinds and to pay therefor out of the general revenue of the city.[192]

[185] Darcantel v. People's Slaughter House &c. Co., 44 La. An. 632; s. c. 11 So. 239.

[186] In re St. John's Cemetery, 133 N. Y. 329; s. c. 31 N. E. 102; affirming s. c. 16 N. Y. S. 894.

[187] In re New York &c. R. Co., 99 N. Y. 12; s. c. 1 N. E. 27; Suburban &c. Transit Co. v. Mayor, 128 N. Y. 510; s. c. 28 N. E. 525.

[188] In re Deansville Cemetery Ass'n, 66 N. Y. 569.

[189] Elster v. Springfield, 49 Ohio St. 82; s. c. 30 N. E. 274.

[190] Morse v. City of West Port, 110 Mo. 502; s. c. 19 S. W. 831.

[191] Chase v. City of Oshkosh, 81 Wis. 313; s. c. 51 N. W. 560. The court said:—"A permanent obstruction, such as trees standing within a sidewalk or traveled street, or stone columns which may interfere with public travel, constitutes per se a public nuisance, and may be summarily removed by direction of the common council." See also, State v. Leaver, 62 Wis. 387, 392; s. c. 22 N. W. 576.

[192] Commonwealth v. George, 148 Pa. St. 463; s. c. 24 Atl. 59. This act was not repealed by act of May 16, 1891 (P. L. Pa. 1891, p. 75), as there is nothing inconsistent with the former act in its provisions. In In re Private Road in Borough of Huntingdon, Appeal of Huntingdon &c. R. Co., 149 Pa. St. 133; s. c. 24 Atl. 189, it was held that the act of April 3, 1851 (Brightly Purd. Dig. Pa. 202 et seq.), giving boroughs power "to survey, lay out, enact and ordain such roads, streets, lanes, alleys, etc.," "as they may deem necessary," and all "needful jurisdiction over the same," has been held not to repeal, as to boroughs, the act of June, 1836 (Brightly Purd. Dig. Pa. 1499), which authorizes courts of quarter sessions to lay out, upon the petition of one or more persons, "a road from their respective dwellings or plantations to a highway or

§ 595. Construction of statutory provisions.—A recent Pennsylvania statute relative to laying out and opening streets[193] has been construed to be an affirmative act, conferring additional and cumulative powers on municipalities of all grades, but repealing no prior statute expressly, nor any portion thereof by implication, "unless the system provided by it is so inconsistent with that previously existing as to make it impracticable for them to stand together."[194] In the case cited it was held that the power exercised in passing the ordinance under the former statute remained, but the proceedings to carry out the improvement might be under the later statute.[195] Where a city charter requires the board of public works to prepare a general plan of laying out into streets and alleys all of the city not already laid out, a provision that "no private plan shall be allowed * * * which does not conform thereto, and no plat shall hereafter be recorded, or be of any validity, unless before such record the approval of such board shall be duly indorsed thereon," does not empower the board to refuse to approve a plat without a dedication by the owner of the land platted of a portion of his land for the extension of certain streets.[196] And where the plat does not interfere with the general plan established for streets, a writ of mandamus will be granted on petition of such owner, compelling the board to indorse its ap-

place of necessary public resort, or to any private way leading to a highway."

[193] May 16, 1891, P. L. Pa. 75, in relation to laying out, opening, etc., of streets, etc., in the several municipalities of the commonwealth.

[194] Borough of Hanover's Appeal, 150 Pa. St. 202; s. c. 24 Atl. 669, holding the act of April 3, 1851 (P. L. 320), which authorizes borough councils of their own motion to pass ordinances for widening streets, to be unrepealed; following Hand v. Fellows, 148 Pa. St. 456; s. c. 23 Atl. 1126; McCall v. Coates, 148 Pa. St. 462; s. c. 23 Atl. 1127. The court said: —"In the task of steering through constitutional restrictions, well meant, but destructive of necessary governmental powers, the legislature had found it difficult to construct statutes conferring powers and modes of procedure suitable to all the diverse needs, situations and wishes of the multitude of municipal organizations in the state. In the effort some well-intended acts had come to naught, and others had been shorn of sections that left inconvenient gaps here and there in the whole system. It was to fill these gaps, to support the casus omissi, and to supplement powers doubtful or defective, that the act of 1891 was passed. It took away no power in any municipality that existed before nor interfered with any mode of its exercise, except where there is an irreconcilable repugnancy."

[195] Borough of Hanover's Appeal, 150 Pa. St. 202; s. c. 24 Atl. 669.

[196] Van Husan v. Heames, 91 Mich. 519; s. c. 52 N. W. 18. The court said:—"The power conferred goes no further than to prevent landowners from laying out streets contrary to the general plan."

proval.[197] An act providing for the consent of the municipal authorities as a condition precedent to the incorporation of a company to supply the city with water was construed to require a consent to the formation of a company by the very persons and in the manner proposed. The consent could be given by ordinance and might be wholly refused, but would be defective if given in general terms,[198] and permission might be granted to more than one company.[199]

§ **596. Protection of streets.**—The council of the city of Kingston had the authority, under the provisions of its charter giving the council powers of commissioners of highways, "to lay out, make and open streets * * * and cause the same to be repaired; * * * to cause any street * * * to be graded, paved or repaired;" to prescribe "of what materials" the same shall consist, and its power to pass ordinances for the purpose of executing the foregoing and other powers conferred upon it, authorized an ordinance prohibiting any person from drawing a load weighing from two and one-half to five tons over any paved street of a city.[200] Under a power to make ordinances to prevent encroachments on and obstructions to the city streets and to regulate the use of streets and sidewalks for signs, awnings and other purposes, the council may by ordinance authorize the erection and maintenance of awnings over the sidewalks.[201] An ordinance which purports to grant permission to erect poles and stretch wires in a public street as a part of a system of electrical railroading is illegal.[202] The laying out of drives, etc., along any beach within a city's limits, which is flowed by ocean tides, whether a beach of the ocean proper or of an outlet, is authorized by a statute providing that cities located on "or" near the ocean, and embracing within their limits any "beach" or ocean front, to lay out streets, drives or walks "along the beach or ocean front."[203] A common council has no

[197] Van Husan v. Heames, 91 Mich. 519; s. c. 52 N. W. 18.

[198] State v. City of Plainfield, 54 N. J. L. 526; s. c. 24 Atl. 493.

[199] State v. Consumers' Water Co., 51 N. J. L. 420; s. c. 17 Atl. 824. See also, Proprietors &c. v. Proprietors &c., 11 Pet. 420; Mohawk Bridge Co. v. Utica &c. Bridge Co., 6 Paige (N. Y.) 554; Proprietors &c. v. Hoboken Land &c. Co., 2 Beas. (N. J.) 81; Delaware &c. Canal Co. v. Camden &c. R. Co., 1 C. E. Green (N. J.) 321.

[200] People v. Wilson, 16 N. Y. S. 583; s. c. 41 N. Y. St. 765.

[201] Hoey v. Gilroy, 129 N. Y. 132; s. c. 29 N. E. 85, reversing s. c. 14 N. Y. Supp. 159. It is not authorized by Supp. Rev. N. J. 369, § 30, which empowers street-railways, with the consent of municipal authorities, to use electric or chemical motors or grip cables as the propelling power of its cars instead of horses.

[202] State v. Inhabitants &c., 54 N. J. L. 92; s. c. 23 Atl. 281; State v. Mayor &c., 54 N. J. L. 102; s. c. 23 Atl. 284.

[203] State v. Wright, 54 N. J. L. 130; s. c. 23 Atl. 116.

power or authority to authorize the permanent possession of a public highway, street or alley for private purposes.[204] The court said: "The erection of a structure of the character and permanency described in the complaint, for purely private purposes, upon or across the public streets, alleys, highways or wharves of a city, is unlawful, and such as the common council can not authorize and should not tolerate. Where a street or other public way is used for public purposes, such as for street-railways or other improved methods of travel, the common councils have authority to permit permanent structures to be placed on the streets, but they have no such power when the purpose is strictly private and the public in no manner served."[205]

§ 597. **Obstructions in streets.**—A city has no power in the absence of legislation by contract or ordinance to confer the right to obstruct its streets, or to grant franchises or privileges in the same which will tend to impair the public uses in the same.[206] Where the city is charged with the duty of removing all nuisances from the streets it may file a bill to remove obstructions down to a wharf-line, although the legislature may have placed the wharves in the hands of a trustee for the benefit of certain bondholders.[207] In the absence of statutory power a city has no power to license the erection and maintenance of stock-weighing scales, in a public street, for the personal profits of the licensee.[208] A city has power to summarily abate obstructions in its streets which are dangerous to the public without an ordinance.[209] Where a state has power to attach conditions to a charter beneficial to the public, the city may do so as part of its delegated authority in granting a permit for the use of its streets by a corporation.[210]

§ 598. **Use of streets by street-railways.**—Where by its charter a street-railway company has power to construct its road in the streets

[204] Adams v. Ohio Falls Car Co., 131 Ind. 375; s. c. 31 N. E. 57. Cf. State v. Berdetta, 73 Ind. 185; Sims v. City of Frankfort, 79 Ind. 446; Elliott Roads & Streets (2d ed.), § 653; Pettis v. Johnson, 56 Ind. 139.

[205] Adams v. Ohio Falls Car Co., 131 Ind. 375; s. c. 31 N. E. 57. For illustration of this distinction, see Mikesell v. Durkee, 34 Kan. 509; s. c. 9 Pac. 278.

[206] City of Mobile v. Louisville &c. R. Co., 124 Ala. 132; s. c. 26 So. 902. Cf. Birmingham &c. R. Co.'s Cases, 79 Ala. 465, 472; Port of Mobile v. Louisville &c. R. Co., 84 Ala. 115, 121; s. c. 4 So. 106; Costello v. State, 108 Ala. 45, 49; s. c. 18 So. 820; Grand Lodge v. Waddill, 36 Ala. 313, 318; Pennsylvania R. Co. v. Canal Com'rs, 21 Pa. St. 9; Richmond &c. R. Co. v. Louisa R. Co., 13 How. 81.

[207] City of Mobile v. Louisville &c. R. Co., 124 Ala. 132; s. c. 26 So. 902.

[208] State v. Stroud (Tenn. Ch.), 52 S. W. 697.

[209] Bitzer v. Leverton, 9 Kan. App. 76; s. c. 57 Pac. 1045.

[210] People v. Suburban R. Co., 178 Ill. 594; s. c. 53 N. E. 349.

of a city, consent may be given by the city authorities to the use of its streets without express authority in the charter.[211] Where a city pursuant to a statute on petition of the property-owners grants permission to a railroad company to lay its tracks it has no power to extend the privilege beyond the time fixed in the petition.[212]

§ **599. Telegraph- and telephone-poles in streets—Removal.**—A statute providing that no poles shall be erected in the streets without the consent of the landowners, does not apply to the public lighting of the streets by a city or town.[213] Where a city is vested with power of supervision and control of its streets, all grants and privileges granted by it are subject to its right to enact such legislation from time to time as the public may require, and so when a telephone company has been granted the right to use a street in the maintenance of its line, and subsequently such use becomes dangerous and inconvenient to the public, the city may require the removal of the line to another street which is a reasonable substitute.[214] Under the Kentucky constitution, § 163, telephone-wires are not permitted to be erected in the streets without a city's consent, and if erected after the adoption of the constitution without such consent the city may compel the removal.[215]

§ **600. Vacation of streets.**—Where a city by its charter has power to vacate its streets it may vacate a portion of a street where it has title and convey the same to abutting owners for the purpose of having a factory erected thereon by a private corporation.[216] If a city has made an ineffectual attempt to vacate a street it is not estopped from claiming that the street is a public highway.[217]

[211] Almand v. Atlanta &c. St. R. Co., 108 Ga. 417; s. c. 34 S. E. 6. Cf. City Council &c. v. Port Royal &c. R. Co., 74 Ga. 658; Kavanagh v. Mobile &c. R. Co., 78 Ga. 271; s. c. 2 S. E. 636; Augusta &c. R. Co. v. City Council &c., 100 Ga. 701; s. c. 28 S. E. 126; Daly v. Georgia &c. R. Co., 80 Ga. 793; s. c. 7 S. E. 146; Davis v. East Tennessee &c. R. Co., 87 Ga. 605; s. c. 13 S. E. 567; Beekman v. Third Ave. R. Co., 153 N. Y. 144; s. c. 47 N. E. 277; Milhau v. Sharp, 17 Barb. (N. Y.) 435; Attorney-General v. Lombard &c. R. Co., 10 Phila. (Pa.) 352; Eichels v. Evansville St. R. Co., 78 Ind. 261; s. c. 41 Am. R. 561; City of Boston v. Richardson, 13 Allen (Mass.) 146; Davis v. Mayor &c., 14 N. Y. 506; Covington St. R. Co. v. City of Covington, 9 Bush (Ky.) 127.

[212] City of Chester v. Wabash &c. R. Co., 182 Ill. 382; s. c. 55 N. E. 524.

[213] Meyers v. Hudson Co. Elec. Co., 63 N. J. L. 573; s. c. 44 Atl. 713.

[214] Michigan Tel. Co. v. City of Charlotte, 93 Fed. 11.

[215] East Tenn. Tel. Co. v. City of Russellville, 21 Ky. L. 305; s. c. 51 S. W. 308.

[216] Knapp, Stout & Co. v. St. Louis, 153 Mo. 560; s. c. 55 S. W. 104. Cf. Clough v. Holden, 115 Mo. 336; s. c. 21 S. W. 1071; Hoester v. Sammelmann, 101 Mo. 619; s. c. 14 S. W. 728; Nichols v. Stevens, 123 Mo. 96, 117; s. c. 25 S. W. 578; 27 S. W. 613.

[217] City of Ashland v. Chicago &c. R. Co., 105 Wis. 398; s. c. 80 N. W.

§ 601. **Grading of streets.**—An act authorizing a city council to fix the district benefited by a local improvement and to apportion and assess the benefits is not open to the objection that it confers an arbitrary power on the council.[218] This form of taxation has been repeatedly held valid and the discretionary power is properly lodged in the council.[219] Where in the exercise of its power a city has changed the grade in a street to the damage of the property upon which it abuts, on a trial of an appeal by the owner from the assessment of damages the city should not be allowed to plead irregularities in its proceedings to defeat the owner's claim for fair damages.[220] A city council having general authority to establish the grades of streets may, under peculiar circumstances, fix the grade for one side of a street on a materially different level or plane from that of the other side; and if this renders it incidentally necessary to construct a retaining-wall along the center of the street, to support the earth on the higher grade, that may be done. Such an exercise of public rights is not an infringement of the rights of an adjacent proprietor whose property may be injured thereby.[221] A right to lay pipes in the streets of a city is subordinate to the power of the city to establish grades and grade the streets.[222] A statute conferring upon cities the power to change grades of streets, whereby railroads entering said cities may relocate, change or elevate their railroads, has been held not to be limited to railroads in existence at the time of the passage of the act.[223] But under that act a change of grade must be confined to such limits as are necessary for the accomplishment of its purpose.[224] Where the power to grade a street is in the city council a court of equity has no power to fix the grade.[225]

1101. Cf. Trester v. City of Sheboygan, 87 Wis. 496; s. c. 58 N. W. 747; James v. City of Darlington, 71 Wis. 173; s. c. 36 N. W. 834.

[218] Beecher v. City of Detroit, 92 Mich. 268; s. c. 52 N. W. 731.

[219] Beecher v. City of Detroit, 92 Mich. 268; s. c. 52 N. W. 731. See also, City of Detroit v. Daly, 68 Mich. 503, 509; s. c. 37 N. W. 11.

[220] Second Cong. Church Soc. &c. v. City of Omaha, 35 Neb. 103; s. c. 52 N. W. 829.

[221] Yanish v. City of St. Paul, 50 Minn. 518; s. c. 52 N. W. 925. See also, O'Brien v. City of St. Paul, 25 Minn. 331, 334; Henderson v. City of Minneapolis, 32 Minn. 319; s. c. 20 N. W. 322.

[222] Stillwater Water Co. v. City of Stillwater, 50 Minn. 498; s. c. 52 N. W. 893.

[223] State v. Mayor &c., 54 N. J. L. 293; s. c. 23 Atl. 648.

[224] State v. Mayor &c., 54 N. J. L. 293; s. c. 23 Atl. 648.

[225] Town of Harrisonburg v. Roller, 97 Va. 582; s. c. 34 S. E. 523; Goszler v. Corporation of Georgetown, 6 Wheat. 593; Roanoke Gas Co. v. City of Roanoke, 88 Va. 810; s. c. 14 S. E. 665.

§ 602. Allowing the use of streets by railroads.—A city council has no power to condemn land for a street for the express purpose of giving a railroad company the use of a street in such manner as to exclude all other travel therefrom.[226] The power conferred on the common council by the charter of Buffalo[227] "to permit the track of a railroad to be laid in, along or across any street or public ground" is subject to the qualification that no property-rights of abutting owners are thereby invaded, even in cases where the city has acquired the fee of the street in which it authorizes such track to be laid.[228] The laws of Kentucky allow municipal corporations to grant rights of way over the public streets and alleys only on condition that the use of the easement shall not obstruct or "unreasonably" impede the passage of persons or vehicles. It has been held that the fact that while cars are passing along a railroad laid in a public alley, four hundred feet long and sixteen feet wide, the passage of vehicles drawn by horses is totally prevented, though for only a few minutes at a time, renders the use of the alley by the railroad company an "unreasonable" obstruction.[229]

§ 603. The same subject continued.—A statute[230] authorizing the common council to discontinue and close a portion of Liberty street in the city of Schenectady for the purposes of a railroad-depot "to the passage of vehicles, horses and cattle" has been held sufficient authority for an ordinance of the council authorizing the railroad company to construct and maintain an iron foot-bridge for pedestrians over the railroad-track on the discontinued portion of the street and to close the surface of the street to pedestrians by the erection of a fence.[231] An order of the board of public works requiring a railroad company which, under legislative permission, laid its tracks in a city and continuously used them for eighteen years, to remove its tracks on twenty-five days' notice, has been held beyond its authority, though a statute, passed after the construction of the tracks, empowered the

[226] Ligare v. City of Chicago, 139 Ill. 46; s. c. 28 N. E. 934. See also, Moses v. Pittsburg &c. R. Co., 21 Ill. 515; Stack v. City of East St. Louis, 85 Ill. 377; Canal Co. v. Garrity, 115 Ill. 155; s. c. 3 N. E. 448; City of Olney v. Wharf, 115 Ill. 523; s. c. 5 N. E. 366; Dubach v. Railroad Co., 89 Mo. 483; s. c. 1 S. W. 86; Railway Co. v. City of Louisville, 8 Bush (Ky.) 415.

[227] Laws N. Y. 1870, ch. 519, tit. 3, § 19.

[228] Reining v. New York &c. R. Co., 128 N. Y. 157; s. c. 28 N. E. 640; affirming s. c. 13 N. Y. S. 238.

[229] Commonwealth v. City of Frankfort, 92 Ky. 149; s. c. 17 S. W. 287, holding that the city had no authority to grant the right to a railroad company to use such an alley for a branch railroad.

[230] Laws of New York, 1884, ch. 187.

[231] Weinckle v. New York &c. R. Co., 15 N. Y. S. 689; s. c. 39 N. Y. St. 584.

city council to "direct and control railroad-tracks" within the city.[232] It is competent for the legislature to give a board of trustees of an incorporated town power to grant the use of its streets to a railroad for a side-track. And when once granted it is not revocable at the mere pleasure of the board, but there must be failure on part of the road to comply with the terms of the grant before the privilege can be recalled.[233] Cities and villages incorporated under the general incorporation law of Illinois are made the representatives of the state with respect to the control of streets and highways and bridges within their limits, and are invested with power to lay out, alter or vacate streets, regulate the use of the same, and to construct and keep in repair bridges, viaducts, etc., and regulate the use thereof. And where the city has the right to bridge a river it may empower a railroad company to do so.[234]

§ **604. Regulations as to railroads using streets.**—A municipal corporation may regulate within its limits the running and stopping of cars propelled by steam by virtue of its power over the streets and to protect the safety of citizens and their property.[235] But it has been held that in the absence of a legislative grant of power to that end the police juries of Louisiana have no authority to prohibit by ordinance the running of railroad-trains through the villages of their parish at a greater speed than six miles an hour.[236] A charter which gives the mayor and council authority to lay out streets and pass all ordinances respecting them, and to make any other regulation that shall appear to them necessary and proper for the security, welfare and interest of the city, confers no authority to make a contract to obtain the right of way through the city for a railway.[237] The power to grade and improve streets is a legislative power and a continuing one unless there is some special restraint imposed in the charter of the corporation.[238] The power granted to a city to "regulate the use of streets" has been held to extend to public uses only, and not to authorize an ordinance permitting a private corporation to build a railroad-track and run trains across streets of the city for the transaction of

[232] Sinnott v. Chicago &c. R. Co., 81 Wis. 95; s. c. 50 N. W. 1097.

[233] Town of Arcata v. Arcata &c. R. Co., 92 Cal. 639; s. c. 28 Pac. 676.

[234] McCartney v. Chicago &c. R. Co., 112 Ill. 611.

[235] Merz v. Missouri Pac. R. Co., 88 Mo. 672; s. c. 1 S. W. 382.

[236] State v. Miller, 41 La. An. 53; s. c. 7 So. 672. These police juries have no general grant of police power.

[237] Covington &c. R. Co. v. City of Athens, 85 Ga. 367; s. c. 11 S. E. 663.

[238] Estes v. Owen, 90 Mo. 113; s. c. 2 S. W. 133.

its business.[239] The charter of a city authorizing the adoption of ordinances to prevent the incumbering of streets with carriages authorizes an ordinance to prevent the obstruction of streets by railroad-cars.[240] An ordinance requiring a railroad company to light its line by electricity within twenty days after notice of the passage of the ordinance is not necessarily unreasonable.[241] Where an ordinance grants a right of way to a railroad company through a city the acceptance of the benefits and privileges by the corporation makes it also subject to the burdens.[242]

§ 605. The same subject continued.—A statute which gave authority to the mayor and council of a city to permit and sanction encroachments upon its streets for a fair and reasonable compensation paid in money into the city treasury was held not to empower the city authorities to grant a railroad company a block of land eighty feet wide and four hundred and eighty feet long in one of the city streets.[243] Nor did they have the power to make a donation of ten acres of land of the city commons to a railroad corporation, and afterwards grant to such corporation large encroachments upon a street of the city, the consideration therefor being the return of this ten acres of land to the city.[244] Nor did the general clause in the charter of the city, giving it power to control its streets, authorize the grant to a railroad company of the privilege of laying its tracks along its streets.[245]

[239] Glaessner v. Anheuser-Busch Brewing Ass'n, 100 Mo. 508; s. c. 13 S. W. 707.

[240] City of Duluth v. Mallet, 43 Minn. 204; s. c. 45 N. W. 154.

[241] Village of St. Marys v. Lake Erie &c. R. Co., 60 Ohio St. 136; s. c. 53 N. E. 795.

[242] Chicago &c. R. Co. v. People, 79 Ill. App. 529.

[243] Daly v. Georgia &c. R. Co., 80 Ga. 793; s. c. 7 S. E. 146. The court construed the act to allow the grant of "small encroachments to property holders along the whole length of the street and on both sides thereof in order to narrow the street. . . . Such a grant as this was not an encroachment, but a dedication of the major part of the street for purposes entirely foreign to the object for which the street was laid out." This was an obstruction, a nuisance, not an encroachment.

[244] Daly v. Georgia &c. R. Co., 80 Ga. 793; s. c. 7 S. E. 146. The legislative intention could not be thus circumvented.

[245] Daly v. Georgia &c. R. Co., 80 Ga. 793; s. c. 7 S. E. 146; 2 Dillon Munic. Corp., § 724. See also, State v. Corrigan &c. R. Co., 85 Mo. 263; Hinchman v. Paterson Horse R. Co., 17 N. J. Eq. 75; Jersey City &c. R. Co. v. Jersey City &c. R. Co., 20 N. J. Eq. 61; 2 Wood Ry. Law, § 273; Kavanagh v. Mobile &c. R. Co., 78 Ga. 271; s. c. 2 S. E. 636; Eichels v. Evansville St. R. Co., 78 Ind. 261; s. c. 41 Am. R. 561; Davis v. East Tennessee &c. R. Co., 87 Ga. 605; s. c. 13 S. E. 567; Cooley Const. Lim. 556; Elliott v. Fair Haven &c. R. Co., 32 Conn. 579; Cincinnati &c. St.

§ 606. Crossings of railways.—An act declaring that "the city council shall have power by condemnation or otherwise to extend any street over or across any railroad-track, right of way, or land of any railroad company," gives the power to extend streets across a railroad-track, even though such extension would subject the railroad company to great inconvenience and hindrance in the operation of its road; also to extend a street across a railroad "yard" consisting merely of a collection of tracks.[246] And a court of equity will not compel the city to extend the street across the track by means of a viaduct for the convenience of the railroad company, since under the statute the city council has the option, in its discretion, of creating a crossing at grade or above grade, and its discretion should not be interfered with by the courts.[247] The rule in such cases is that in the exercise

R. Co. v. Incorporated Village of Cumminsville, 14 Ohio St. 523; Hobart v. Milwaukee City R. Co., 27 Wis. 194; s. c. 9 Am. R. 461; Attorney-General v. Metropolitan R. Co., 125 Mass. 515; s. c. 28 Am. R. 264; Brown v. Duplessis, 14 La. An. 842; Savannah &c. R. Co. v. Mayor &c., 45 Ga. 602; Peddicord v. Baltimore &c. R. Co., 34 Md. 463; Hiss v. Baltimore &c. R. Co., 52 Md. 242; s. c. 36 Am. R. 371; Stanley v. City of Davenport, 54 Iowa 463; s. c. 6 N. W. 706; 37 Am. R. 216.

[246] Illinois &c. R. Co. v. City of Chicago, 141 Ill. 586; s. c. 30 N. E. 1044. See also, Illinois &c. R. Co. v. City of Chicago, 138 Ill. 453; s. c. 28 N. E. 740; Chicago &c. R. Co. v. City of Chicago, 140 Ill. 309; s. c. 29 N. E. 1109. As to the "yard," see Delaware &c. Canal Co. v. Village of Whitehall, 90 N. Y. 21. In the exercise of its governmental power the city has a right to open and use a disused crossing over a railroad, and the statute of limitations has no application: Chicago &c. R. Co. v. City of Council Bluffs, 109 Iowa 425; s. c. 80 N. W. 564.

[247] Illinois &c. R. Co. v. City of Chicago, 141 Ill. 586; s. c. 30 N. E. 1044. See also, Lake Shore &c. R. Co. v. Chicago &c. R. Co., 97 Ill. 506; Curry v. President &c., 15 Ill. 320; Railroad Co. v. Town of Lake, 71 Ill. 333; Durham v. Hyde Park, 75 Ill. 371; Brush v. City of Carbondale, 78 Ill. 74; Sheridan v. Colvin, 78 Ill. 237; 1 Dillon Munic. Corp. (4th ed.), § 95; Lewis Eminent Domain, § 238; Boom Co. v. Patterson, 98 U. S. 403; Chicago &c. R. Co. v. Wiltse, 116 Ill. 449; s. c. 6 N. E. 49; People v. New York &c. R. Co., 74 N. Y. 302; Milwaukee &c. R. Co. v. City of Faribault, 23 Minn. 167; National &c. R. Co. v. Central R. Co., 32 N. J. Eq. 755; National &c. R. Co. v. State, 53 N. J. L. 217; s. c. 21 Atl. 570; Struthers v. Railway Co., 87 Pa. St. 282; Central R. Co. v. State, 32 N. J. L. 220; 2 Wood Ry. Law 981; Elliott Roads and Streets (2d ed.), §§ 778, 779; Railroad Co. v. Bentley, 64 Ill. 438; People v. Chicago &c. R. Co., 67 Ill. 118; Railroad Co. v. City of Dayton, 23 Ohio St. 510; Town Council &c. v. Railroad Co., 10 R. I. 365; People v. Boston &c. R. Co., 70 N. Y. 569; Drexel v. Town of Lake, 127 Ill. 54; s. c. 20 N. E. 38, where the question to be determined by the trustees of the town was, which one of two modes of carrying off the sewage of a district should be adopted as the best and most expedient mode, and the court said:—"The choice of expedients is within the legislative discretion of the trustees of the town—a discretion with which the

of the power of the municipal corporation in this respect there should be no unreasonable impairment of the usefulness of the railroad right of way.[248] The governing authorities of a municipal corporation may, in furtherance of the object of a statute empowering them to alter streets which were to be crossed by railroads looking generally to the safety of life of citizens, vacate any street or any part of the street, and change the grade upon any street or part of a street without the consent of abutting owners. They may also construct bridges as parts of streets to carry the public way above intersecting railroads.[249] The council of a borough organized under an act conferring powers to be exercised by ordinance has no right, by a mere resolution, to enter into a contract by which the public moneys are to be expended, and borough bonds are to be issued, to pay for grading and filling a street.[250] A resolution by the common council of a city authorizing a person to grade a portion of a street and build a bridge thereon across a private canal has been held invalid. Such authorization should have been by ordinance.[251]

§ **607. Miscellaneous matters relating to streets.**—An ordinance prohibiting the cutting, trimming, or breaking of any tree-limb or twig without permission and providing a penalty for so doing, is a valid exercise of police power.[252] The mere declaration by the common council that a street exists does not give the city a right of entry as against the private rights based on ownership and actual possession.[253] Ejectment by the city is the proper remedy againt one unlawfully encroaching on the public highway under its control.[254] Power

courts will not interfere unless clearly abused."

[248] Wood Ry. Law, § 271, p. 975, n. 3, and cases; Commonwealth v. Erie &c. R. Co., 27 Pa. St. 339; People v. Dutchess &c. R. Co., 58 N. Y. 152; Town Council &c. v. Railroad Co., 10 R. I. 365; Chicago &c. R. Co. v. Moffitt, 75 Ill. 524; City of Bridgeport v. New York &c. R. Co., 36 Conn. 255; 2 Wood Ry. Law, § 271, p. 981, n. 1; People v. Boston &c. R. Co., 70 N. Y. 569; State v. St. Paul &c. R. Co., 35 Minn. 131; s. c. 28 N. W. 3.

[249] Read v. City of Camden, 54 N. J. L. 347; s. c. 24 Atl. 549. See also, State v. City of Elizabeth, 54 N. J. L. 462; s. c. 24 Atl. 495.

[250] State v. Mayor &c., 54 N. J. L. 476; s. c. 24 Atl. 481.

[251] State v. Mayor &c., 54 N. J. L. 474; s. c. 24 Atl. 448. See also, Packard v. Railroad Co., 48 N. J. Eq. 281; s. c. 22 Atl. 227; State v. Common Council &c., 45 N. J. L. 279, 282.

[252] Consolidated Traction Co. v. East Orange Tp., 63 N. J. L. 669; s. c. 44 Atl. 1099. Under provisions of charter the council of Cape May by ordinance regulate the use of streets, or portions thereof, by hucksters and other vendors: Tomlin v. City of Cape May, 63 N. J. L. 429; s. c. 44 Atl. 209.

[253] State v. Judge &c., 51 La. An. 1768; s. c. 26 So. 374.

[254] City of Cleveland v. Cleveland

may be conferred on a city by the legislature to use streams within the state as outlets for public sewers.[255]

§ 608. **Sewers.**—A complaint in an action to set aside a special assesment to pay for the construction of a sewer and a pavement on the street in front of plaintiff's land was held insufficient, as it alleged facts which only showed mere irregularities and failures to comply with some minor statutory requirements and did not allege an offer to pay the amount of such assessments justly chargeable to plaintiff's property.[256] In Pennsylvania it has been held that a lot-owner can not defend against an assessment under the front-foot rule, for the construction of a sewer in front of his lot, on the ground that such sewer was neither a private benefit to him or his property nor a matter of necessity to the public.[257] It is not enough for the complaint to allege in direct terms the inequality and injustice of such assessment; it must also allege facts showing such inequality and injustice or going to the groundwork of the assessment.[258] Nor could the plaintiff limit his liability to the improvement of that portion of the street immediately in front of his property, and then only to the extent it was benefited. The city was empowered by its charter to apportion the entire cost of the sewer and pavement respectively upon that street among the several lots fronting thereon, under the front-foot rule.[259]

&c. R. Co., 93 Fed. 113; Ocean Grove &c. Assn. v. Berthall, 63 N. J. L. 312; s. c. 43 Atl. 887.

[255] Sayre v. Mayor &c., 60 N. J. Eq. 361; s. c. 45 Atl. 985.

[256] Meggett v. City of Eau Claire, 81 Wis. 326; s. c. 51 N. W. 566.

[257] Michener v. City of Philadelphia, 118 Pa. St. 535; s. c. 12 Atl. 174; City of Harrisburg v. McCormick, 129 Pa. St. 213; s. c. 18 Atl. 126; City of Chester v. Black, 132 Pa. St. 568; s. c. 19 Atl. 276. See also, as to power to construct sewers, etc., Hammett v. Philadelphia, 65 Pa. St. 146; Pennock v. Hoover, 5 Rawle (Pa.) 291; Northern Liberties v. St. John's Church, 13 Pa. St. 104; City of Philadelphia v. Wistar, 35 Pa. St. 427; Commonwealth v. Woods, 44 Pa. St. 113; Magee v. Commonwealth, 46 Pa. St. 358; Wray v. Mayor &c., 46 Pa. St. 365; Stroud v. City of Philadelphia, 61 Pa. St. 255; Lipps v. City of Philadelphia, 38 Pa. St. 503; City of Philadelphia v. Tryon, 35 Pa. St. 401; Brientnall v. City of Philadelphia, 103 Pa. St. 156.

[258] Pratt v. Lincoln Co., 61 Wis. 62; s. c. 20 N. W. 726; Fifield v. Marinette Co., 62 Wis. 532; s. c. 22 N. W. 705; Wisconsin &c. R. Co. v. Ashland Co., 81 Wis. 1; s. c. 50 N. W. 937, 939, 940. See also, Wisconsin &c. R. Co. v. Lincoln Co., 67 Wis. 478; s. c. 30 N. W. 619; Canfield v. Bayfield Co., 74 Wis. 60, 64; s. c. 41 N. W. 437; 42 N. W. 100; Green Bay &c. Co. v. Outagamie Co., 76 Wis. 588; s. c. 45 N. W. 536,—this last approved and sanctioned in Farrington v. New England &c. Co., 1 N. D. 102; s. c. 45 N. W. 191, 194; Avant v. Flynn, 2 S. D. 153; s. c. 49 N. W. 15.

[259] Pratt v. Lincoln Co., 61 Wis. 62; s. c. 20 N. W. 726. See also, State v. City of Portage, 12 Wis. 562.

§ 609. Fire-limits—Public health.—A provision in a charter to prevent the reconstruction in wood of old buildings within certain limits does not include the power to prevent the repairing with shingles the roof of buildings originally covered with similar materials.[260] An ordinance establishing fire-limits is not inconsistent with the general laws of Georgia.[261] Power by charter to pass ordinances necessary for the preservation of the health, good order, etc., of the town, authorizes an ordinance limiting the maximum quantity of land lawful to be cultivated within the corporate limits.[262] And an ordinance imposing a proper and reasonable restriction upon the enjoyment of property to prevent its becoming injurious to public health is a legal exercise of the police power of the state which it is competent for the legislature to delegate by charter to the municipal authorities;[263] also to compel a railway company to water its tracks so as to lay the dust.[264] A municipal corporation can not control the owners of property in the mode or manner of constructing their buildings, within certain designated limits, in the absence of express legislative authority.[265] The grant to a municipal corporation of power to provide for the prevention and extinguishment of fires necessarily implies the right to establish fire-limits and prohibit the erection of wooden buildings therein.[266] A statute giving power to commissioners of a town to pass "such ordinances as they may deem necessary and

[260] State v. Schuchardt, 42 La. An. 49; s. c. 7 So. 67.

[261] Ford v. Thralkill, 84 Ga. 169; s. c. 10 S. E. 600, as Ga. Code, § 786, expressly authorizes mayors and councils of towns and villages "to make regulations for guarding against danger or damage by fire." See also, 1 Dillon Munic. Corp., §§ 145, 405, n.; Horr & Bemis Munic. Police Ord., §§ 222, 223; Wadleigh v. Gilman, 12 Maine 403; Mayor &c. v. Hoffman, 29 La. An. 651; Baumgartner v. Hasty, 100 Ind. 575; s. c. 50 Am. R. 830; dictum of Shaw, C. J., in Commonwealth v. Tewksbury, 11 Met. (Mass.) 55, 58; City of Charleston v. Reed, 27 W. Va. 681; Williams v. City Council &c., 4 Ga. 509; Kneedler v. Borough of Norristown, 100 Pa. St. 368; City of Troy v. Winters, 2 Hun (N. Y.) 63; Pye v. Peterson, 45 Tex. 312; s. c. 23 Am. R. 608.

[262] Town Council &c. v. Pressley, 33 S. C. 56; s. c. 11 S. E. 545. See also, as to the power to regulate, restrain and suppress particular kinds of business, 1 Dillon Munic. Corp. (3d ed.), § 144; Harrison v. Mayor &c., 1 Gill (Md.) 264; City Council v. Wentworth St. Baptist Church, 4 Strob. (S. C.) 306; State v. Mayor &c., 10 Rich. L. (S. C.) 491.

[263] Town Council &c. v. Pressley, 33 S. C. 56; s. c. 11 S. E. 545. See also, 1 Dillon Munic. Corp., § 146; Commonwealth v. Alger, 7 Cush. (Mass.) 53.

[264] City &c. R. Co. v. Mayor &c., 77 Ga. 731.

[265] State v. Schuchardt, 42 La. An. 49; s. c. 7 So. 67.

[266] Hubbard v. Town of Medford, 20 Or. 315; s. c. 25 Pac. 640. See also, City of Olympia v. Mann, 1 Wash. 389; s. c. 25 Pac. 337.

beneficial for said town" confers on them authority to prohibit by ordinance any person erecting any building within the limits of the town without a permit from them.[267]

§ 610. **Directions as to buildings.**—Ordinances relating to fire-limits, enacted without authority, may be expressly validated by a subsequent revision of the charter.[268] An ordinance of a city imposing a penalty on persons erecting a certain class of buildings made of combustible materials within certain fire-limits, declaring such buildings nuisances, and giving the council power to tear them down, has been held not void where the city charter empowered the city to prohibit such buildings and to provide for their removal.[269] The charter of a city authorizing the making of ordinances "to prescribe the limits within which wooden buildings shall not be erected" pertains to the future, and an ordinance made thereunder prohibiting, without the council's permission, the erection of "any building constructed in whole or in part of wood" within certain limits, refers to buildings to be erected in the future, and not to buildings in existence and erected by such permission.[270] A city has power to pass an ordinance prohibiting the blasting of rock with explosive compounds under a statute providing that towns may make by-laws to protect persons from dangers incident to the maintenance, occupation or use of buildings on streets.[271] A city is not justified in destroying a building because it is used for illegal and unlawful purposes and thereby becomes an annoyance to other residents of the neighborhood. The wrongful use can be stopped.[272] When the statute authorizes the city council to prescribe the manner of constructing

[267] Commissioners &c. v. Covey, 74 Md. 262; s. c. 22 Atl. 266. And it is within their discretion to refuse a permit.

[268] Brunner v. Downs, 17 N. Y. S. 633; s. c. 43 N. Y. St. 824.

[269] Baxter v. City of Seattle, 3 Wash. 352; s. c. 28 Pac. 537.

[270] City of Buffalo v. Chadeayne, 134 N. Y. 163; s. c. 31 N. E. 443, holding that the defendant, who had a permit from the city council to erect frame buildings within the fire-limits, and had made contracts and incurred liabilities thereon before a rescission of such permit, acquired a private property-right of which he was entitled to protection; affirming s. c. 7 N. Y. S. 501. See also, People v. O'Brien, 111 N. Y. 1-62; s. c. 18 N. E. 692; In re Union El. R. Co. &c., 112 N. Y. 61, 75; s. c. 19 N. E. 664; People v. Otis, 90 N. Y. 48, 52; Stuart v. Palmer, 74 N. Y. 183; City of Detroit v. Detroit &c. Plank R. Co., 43 Mich. 140; s. c. 5 N. W. 275.

[271] Commonwealth v. Parks, 155 Mass. 531; s. c. 30 N. E. 174. The court said:—"Such prohibition is not such a taking of property as to be beyond the police power," under Miller v. Horton, 152 Mass. 540, 647; s. c. 26 N. E. 100.

[272] Bristol &c. Co. v. City of Bristol, 97 Va. 304; s. c. 33 S. E. 588.

stone, brick and other buildings, and fix the limits in which wooden buildings may be erected, the council is not authorized to prohibit the erection of buildings within certain limits unless the buildings, or the outside walls, shall be composed of stone or brick.[273] A city has power to cause to be erected a roofed passageway in front of a building, on the sidewalk, during process of construction.[274] The city is not liable for revoking a building-permit where an express provision of the permit has been violated.[275] An ordinance empowering a building commissioner to grant or refuse permits for buildings from which no appeal is provided is void.[276] A permit which unjustly discriminates between citizens is void.[277] Before the city, or any one representing it can remove a building in process of erection in the fire-limits, it must give the owner notice to remove it himself, and if this is not done the owner may recover damages.[278]

§ **611. Police power.**—Under a city charter giving the council power to pass all ordinances necessary for the due administration of justice and the better government thereof, and "to cause the removal or abatement of any nuisance," the passage of an ordinance requiring a street-car company to put "a driver and conductor" on each car is a proper exercise of the city's police power, and not an impairment of the company's rights, not being unreasonable or oppressive.[279] And a provision in such an ordinance, requiring the police to cause every car not provided with a "driver and conductor" to be returned to the stable, is not an attempt at enforcement without trial, but merely a means of preventing a nuisance by blockading travel.[280] Acts of a territorial legislature empowering county commissioners to grant ferry licenses and regulate the ferries have been upheld as containing a valid exercise of police power.[281] An ordinance of

[273] City of Marion v. Robertson, 84 Ill. App. 113.

[274] Smith v. Milwaukee Builders' &c. Exch., 91 Wis. 360; s. c. 64 N. W. 1041.

[275] Harper v. Mayor &c., 94 Ga. 801; s. c. 22 S. E. 139.

[276] City of Sioux Falls v. Kirby, 6 S. D. 62; s. c. 60 N. W. 156.

[277] City of Brooklyn v. Furey, 30 N. Y. S. 349; s. c. 61 N. Y. St. 287.

[278] Ward v. City of Murphysboro, 77 Ill. App. 549.

[279] South Covington &c. R. Co. v. Berry, 13 Ky. L. 943; s. c. 18 S. W. 1026.

[280] South Covington &c. R. Co. v. Berry, 13 Ky. L. 943; s. c. 18 S. W. 1026. See also, Railroad Co. v. Richmond, 96 U. S. 521, where it was said an ordinance as to running cars in the streets "was a mere regulation of the use of its [the railroad company's] property in the city, and not a 'taking' within the meaning of the constitutional prohibition."

[281] Evans v. Hughes Co., 6 Dak. 102; s. c. 50 N. W. 720. Nor are such acts repugnant to the revised statutes of the United States, § 1889, which provides that the legislative assemblies of the several territories

a town to prohibit peddling within the corporate limits without a license is within the police power, and is not void as discriminating in favor of citizens of the town, since it applies to all persons alike, whether they reside in the town or elsewhere.[282]

§ 612. **The same subject continued.**—Applying the provision of the constitution of California, which authorizes the city and county of San Francisco to make and enforce within its limits such police regulations as are not in conflict with general laws, the supreme court of California has held an ordinance of the city prohibiting the sale of pools, etc., on horse races, "except within the inclosure of a race-track where such trial or contest is to take place," to be valid; for though its incidental effect may be to confer special privileges on the owners of race-tracks, its purpose is to restrain gambling of the character mentioned, which is a proper subject of police regulation.[283]

shall not grant private charters or special privileges. In Commonwealth v. Page, 155 Mass. 227; s. c. 29 N. E. 512, a rule of the board of police of Boston, providing that no person shall use "any hackney-carriage unless he is licensed thereto by the board," and that every vehicle "used for the conveyance of persons for hire from place to place within the city, except a horse-car, shall be deemed a hackney-carriage," has been held to be a reasonable exercise of the authority conferred on the board, under various acts which placed the power in their hands, to act under Pub. St., ch. 28, § 25, empowering the mayor and aldermen of a city to regulate all vehicles used therein. This rule was also held to apply to all vehicles used in the city for the conveyance of persons for hire, whether the vehicles stood in public places or in the stables of their owners. Authority to a town on a navigable stream to operate a ferry depends wholly upon special grants: Hoggard v. Mayor &c., 51 La. An. 683; s. c. 25 So. 349.

[282] Martin v. Town of Rosedale, 130 Ind. 109; s. c. 29 N. E. 410. See Elliott's Supp. Ind., § 826 (Burns' R. S. Ind. 1901, § 4357) pursuant to which it was passed. In Commonwealth v. Cutter, 156 Mass. 52; s. c. 29 N. E. 1146, an ordinance by the city of Boston, providing that "no owner or occupant of land abutting on a private way, and having the right to use such way, shall suffer any filth," etc., to remain on that part of the way adjoining such land, was held to be authorized as a proper exercise of police power, under Pub. St., ch. 27, § 15, which provides that towns may make by-laws for preserving peace and good order within their limits, and St. 1854, ch. 448, § 35, which gives the city council of Boston "power to make all such needful and salutary by-laws and ordinances . . . as towns . . . have power to make and establish." See also, as to the power of cities and towns to adopt ordinances and by-laws for the preservation and promotion of the health of their inhabitants, as an exercise of police power, Commonwealth v. Patch, 97 Mass. 221; Commonwealth v. Curtis, 9 Allen (Mass.) 266; Vandine, Petitioner, 6 Pick. (Mass.) 187; 1 Dillon Munic. Corp. (3d ed.) 369.

[283] Ex parte Tuttle, 91 Cal. 589; s.

Nothing passes by a grant of power to a municipal corporation to establish and regulate ferries across a navigable stream but what is granted in clear and explicit terms. Power conferred on a municipality "to lay out, make, open, widen, regulate and keep in repair all * * * ferries," etc., does not include the power to confer upon any individual the exclusive right to keep and operate a ferry. If by such a grant power to establish ferries is conferred at all, such power is held by the trustees of the city as a public trust, to be exercised as the public good may require.[284] Where the only legislative authority conferred by the charter of a city with reference to billiard-saloons and pool-rooms is to license such places by ordinance, the power to license is to be construed as a power to regulate, and the city council may impose such reasonable terms and conditions as may be necessary to make the license issued efficacious as a police regulation; but in the absence of further authority to regulate or control such places, the council would not be authorized, as against existing licenses at least, to impose new or additional conditions not required or contemplated under the original ordinance, or to provide and enforce penalties for the violation thereof.[285] Where a corporation is authorized to enact ordinances to prohibit practices which are against good morals, or contrary to public decency, and its legislative body determines that any particular practice, such as the uttering of profane language, is against good morals, and prohibits it, its decision is final and will not be reviewed.[286] An ordinance enacting that it shall not be lawful for any horse-railroad company to run any car without having an agent, in addition to the driver, to assist in the control of the car and passengers, and to prevent accidents and disturbances of the good order and security of the streets, is a reasonable regulation and a valid exercise of the general police power vested in a city by its charter.[287] The subject of police power is treated generally in another chapter and is only briefly noticed in this connection. The power of taxation is the exercise of one of the sovereign powers of the state, and is not permitted as an exercise of police power.[288] Under general power to preserve peace, good order, health and safety, a city may prohibit domestic

c 27 Pac. 933. A business carried on to enable persons to bet on horse-races is against public policy and may be prohibited, though not criminal, by statute: Odell v. City of Atlanta, 97 Ga. 670; s. c. 25 S. E. 173.

[284] Minturn v. Larue, 1 McAl. 370.

[285] State v. Pamperin, 42 Minn. 320; s. c. 44 N. W. 251. See also, People v. Meyers, 95 N. Y. 223; Schwuchow v. City of Chicago, 68 Ill. 444; Gilham v. Wells, 64 Ga. 192.

[286] Ex parte Delaney, 43 Cal. 478.

[287] State v. Inhabitants &c., 53 N. J. L. 132; s. c. 20 Atl. 1076. See also, § 611, ante.

[288] Pitts v. City of Vicksburg, 72 Miss. 181; s. c. 16 So. 418.

animals from running at large,[289] and may regulate the storage of petroleum,[290] and the power to regulate burials of human bodies includes the power to prohibit burials in certain localities within the corporate limits,[291] and may prohibit boisterous assemblies,[292] and power to preserve the public peace and morals includes power to prescribe penalties for non-observance of Sunday,[293] but power to provide ordinances for the general welfare does not authorize an ordinance contrary to the express provisions of the charter.[294] Police power does not justify an ordinance in restraint of trade,[295] nor is authority to prohibit gambling-houses authority to prohibit all gaming.[296] The city has power to establish hack-stands in front of public buildings such as a railway-station.[297]

§ 613. **Regulation of liquor traffic.**—Where by charter a city is authorized to adopt such ordinances as may be necessary to secure order and quiet in the city, and protect the morals thereof, it may by ordinance prohibit the keeping for sale, bartering or exchange of vinous, spirituous or malt liquors within its limits.[298] But it has been held that a charter conferring power to pass ordinances to preserve the peace and good order, or for the more effectual suppression of immorality, does not justify the licensing of the sale of intoxicating liquors, or the imposition of penalties for sale without license.[299] There is no doubt, however, that the legislature may grant control over the sale of liquors.[300] Under power to regulate health a city has power to

[289] Cochrane v. Mayor &c., 81 Md. 54; s. c. 31 Atl. 703; Chamberlain v. City of Litchfield, 56 Ill. App. 652.

[290] Waters Pierce Oil Co. v. Mayor &c., 47 La. An. 863; s. c. 17 So. 343.

[291] City of Austin v. Austin City Cemetery Ass'n, 87 Tex. 330; s. c. 28 S. W. 528.

[292] Village of Vicksburg v. Briggs, 102 Mich. 551; s. c. 61 N. W. 1.

[293] Theisen v. McDavid, 34 Fla. 440; s. c. 16 So. 321.

[294] City of Brooklyn v. Furey, 30 N. Y. S. 349; s. c. 61 N. Y. St. 287.

[295] Borough of Warren v. Lewis, 16 Pa. Co. R. 176.

[296] City of Owensboro v. Sparks, 18 Ky. L. 269; s. c. 36 S. W. 4.

[297] Pennsylvania Co. v. City of Chicago, 181 Ill. 289; s. c. 54 N. E. 825. The city of St. Louis has power to require coal-dealers to furnish customers with certificates of weight at the expense of dealers: Sylvester Coal Co. v. City of St. Louis, 130 Mo. 323; s. c. 32 S. W. 649. There is, in absence of statute, no power to prohibit the use of profane language: State v. Horne, 115 N. C. 739; s. c. 20 S. E. 443.

[298] Cunningham v. City of Griffin, 107 Ga. 690; s. c. 33 S. E. 664.

[299] Schlachter v. Stokes, 63 N. J. L. 138; s. c. 43 Atl. 571.

[300] State v. Haines, 35 Or. 379; s. c. 58 Pac. 39. See Cunningham v. City of Griffin, 107 Ga. 690; s. c. 33 S. E. 664. But see Schlachter v. Stokes, 63 N. J. L. 138; s. c. 43 Atl. 571. Under power to protect health, property and person of citizens and to preserve peace and good order a municipal ordinance may prohibit the keeping of a "blind tiger" or the

disinfect second-hand clothing at specified prices.[301] If not infringing upon constitutional rights, the question of reasonableness of prohibiting slaughter-houses within the city limits will not be considered by the courts.[302] An order to remove and destroy animal and vegetable matter is within the express power to protect health and maintain cleanliness,[303] and so is an ordinance to prevent the sale of impure milk, and direct its destruction.[304] A statute which gives a municipality power over the safety, health and comfort of its inhabitants, empowers it to create the office of city scavenger and prohibit others than the city scavenger from doing scavenger-work.[305] An ordinance requiring the immediate removal of dead animals without giving the owner opportunity to dispose of them, is void.[306]

§ 614. **To promote health.**—Under the general police power the legislature may delegate to a municipality the authority to pass ordinances for the preservation of the health or the promotion of the comfort, convenience, good order and general welfare of its citizens, provided, always, that they are not in conflict with the provisions of the federal and state constitutions, framed for the protection of the citizens in the enjoyment of equal rights, privileges and immunities.[307] A municipality authorized by the legislature to pass any ordinance in the nature of a police regulation that is consistent with the laws of the land may prohibit the exposing of any produce, merchandise, cooked provisions, poultry, fruit, vegetables or other commodities on the space between stores and the sidewalk, as well as upon the sidewalk.[308]

sale of vinous, spirituous or malt liquors: Bagwell v. Town of Lawrenceville, 94 Ga. 654; s. c. 21 S. E. 903.

[301] Rosenbaum v. City of Newbern, 118 N. C. 83; s. c. 24 S. E. 1.

[302] Rund v. Town of Fowler, 142 Ind. 214; s. c. 41 N. E. 456; Beiling v. City of Evansville, 144 Ind. 644; s. c. 42 N. E. 621.

[303] State v. Payssan, 47 La. An. 1029; s. c. 17 So. 481.

[304] Deems v. Mayor &c., 80 Md. 164; s. c. 30 Atl. 648.

[305] City of Ouray v. Corson, 14 Colo. App. 345; s. c. 59 Pac. 876.

[306] State v. Morris, 47 La. An. 1660; s. c. 18 So. 710.

[307] State v. Moore, 104 N. C. 714; s. c. 10 S. E. 143; State v. Pendergrass, 106 N. C. 664; s. c. 10 S. E. 1002.

[308] State v. Summerfield, 107 N. C. 895; s. c. 12 S. E. 114. The court said:—"The fact that produce, merchandise, meats, etc., exposed in front of stores might, in the opinion of the commissioners, based on reasonable grounds, endanger the health of the citizens of the town or incommode them in passing by a way left open for them by the owner, or might frighten horses attached to vehicles driven along the streets, would be sufficient to warrant the enactment under the general authority to prohibit nuisances, protect health and prevent individuals from so using their own prop-

§ 615. General welfare, etc.—A general statute empowering city councils "to enact and make all such ordinances, by-laws, rules and regulations not inconsistent with the laws of the state as may be expedient for maintaining the peace, good government and welfare of the city and its trade and commerce" authorizes the enactment of an ordinance regulating the sale of cider by prohibiting such sales in less quantities than a gallon, and forbidding it to be drunk on the premises.[309] Neither was such ordinance unconstitutional as violating private rights or unreasonably or improperly restraining trade.[310] The general-welfare clause has been held to confer power upon a city council to prohibit the keeping open of stores, shops and other places of business on Sunday.[311] Under it an ordinance to prevent the keeping of a bawdy-house has been held valid;[312] also an ordinance prohibiting saloons, restaurants and other places of public entertainment being kept open after ten o'clock at night.[313] So under it a municipality may fix the time or places of holding public markets for the sale of food.[314] The establishment of a by-law imposing a penalty for mutilating any ornamental tree planted in any of the streets or public places of a city has been held within the authority to pass such ordinances as "shall be needful to the good order of the city."[315] Under the power to make regulations which may be necessary or expedient for the promotion of health or the suppression of disease an incorporated city has the right to require sellers of meats to take out licenses.[316]

erty as to subject others to serious and unnecessary inconvenience or danger." See also, State v. Stovall, 103 N. C. 416; s. c. 8 S. E. 900; Intendant &c. v. Sorrell, 1 Jones L. (N. C.) 49; Cooley Const. Lim. *58.

[309] Monroe v. City of Lawrence, 44 Kan. 607; s. c. 24 Pac. 1113. The court said:—"Instead of specifically defining every regulation which might be necessary to the health, safety, peace and convenience of the public, the legislature enacted the general welfare clause; and it seems to us that it furnishes sufficient authority for the council to pass an ordinance so clearly in the interest of peace, good order and health as the one in question."

[310] Monroe v. City of Lawrence, 44 Kan. 607; s. c. 24 Pac. 1113. See also, Powell v. Pennsylvania, 127 U. S. 678; s. c. 8 S. Ct. 992, 1257; Stokes v. Corporation &c. of New York, 14 Wend. (N. Y.) 88; Mayor &c. v. Yuille, 3 Ala. 137; State v. Campbell, 64 N. H. 402; s. c. 13 Atl. 585 and note.

[311] City of St. Louis v. Cafferata, 24 Mo. 94.

[312] State v. Williams, 11 S. C. 288.

[313] State v. Freeman, 38 N. H. 426.

[314] Wartman v. City of Philadelphia, 33 Pa. St. 202.

[315] State v. Merrill, 37 Maine 329.

[316] Kinsley v. City of Chicago, 124 Ill. 359; s. c. 16 N. E. 260. See also, Williams v. City Council &c., 4 Ga. 509; Matter of Yick Wo, 68 Cal. 294; s. c. 9 Pac. 139; City of St. Louis v. Schoenbusch, 95 Mo. 618; s. c. 8 S. W. 791; Mayor v. Williams, 15 N. Y. 502; State v. Welch, 36 Conn. 215; Commonwealth v. McCafferty,

§ 616. To license.—A contract between a council and a corporation for the extension of pipes into the municipal territory from a neighboring city, which leaves for an indefinite period to other parties the regulation of the price to be paid or the quantity or quality of gas to be furnished, and which confers exclusive rights, has been held to be unauthorized, under a statute which prohibits the granting of exclusive privileges.[317] The general legislation of 1887 in Minnesota, regulating the sale of intoxicating liquors, although applicable to cities, has been held not to have had the effect of repealing by implication existing municipal ordinances upon the subject, or the charter power to enact ordinances not inconsistent with the general law.[318] An act giving a city power to assess a license tax upon all persons carrying on "any business, trade or profession" within the city authorizes the assessment of a tax for retailing cigars, although the cigars are sold in connection with a grocery business and the grocer has taken out a general license for such business.[319] A city ordinance declaring it a misdemeanor punishable by fine to keep stallions, etc., within the city limits for service has been held invalid.[320] The board of county supervisors has authority to appoint a license-collector under a valid ordinance referring to the selling of liquor at retail.[321]

§ 617. Occupations.—A power to license and regulate hack-owners and drivers, and to prohibit unlicensed persons and vehicles from engaging in such capacities warrants the imposition of a reasonable pecuniary penalty for a violation of an ordinance requiring such a license.[322] A similar power in a charter extending to public grounds

145 Mass. 384; s. c. 14 N. E. 451; Commonwealth v. Davis, 140 Mass. 485; s. c. 4 N. E. 577; Dillon Munic. Corp. (4th ed.), §§ 396–407.

[317] Cincinnati Gas Light &c. Co. v. Avondale, 43 Ohio St. 257; s. c. 1 N. E. 527.

[318] State v. Harris, 50 Minn. 128; s. c. 52 N. W. 387. The court said, in addition to "repeals by implication" not being "favored":—"This principle has peculiar force from the fact that the laws, the implied repeal of which is in question, were principally special laws, enacted to meet the needs of particular localities, while the repealing act was general, and not thus particular." See also, Moore v. City of Minneapolis, 43 Minn. 418; s. c. 45 N. W. 719.

[319] City of Mobile v. Craft, 94 Ala. 156; s. c. 10 So. 534.

[320] Ex parte Robinson (Tex.), 17 S. W. 1057, as such keeping was not a nuisance per se and its prohibition not authorized either by revised statutes of Texas, arts. 403, 408, empowering cities to abate nuisances, or by art. 383, empowering cities to "regulate" occupations and callings.

[321] Amador Co. v. Kennedy, 70 Cal. 458; s. c. 11 Pac. 758.

[322] Haynes v. City of Cape May, 52 N. J. L. 180; s. c. 19 Atl. 176; City

and spaces has been held to authorize the enactment of an ordinance forbidding farmers, hucksters, pedlers, etc., from standing with their vehicles and carts on the streets adjacent to the city market, within five hundred feet of such market.[323] But provisions conferring powers to license persons in such lines of business have been held to apply only to those who are engaged in business as carriers of persons or property for hire, and not to those who, not being engaged in such business, merely hire out teams and vehicles to those who have property to transport, the hirer himself using and controlling the team and vehicle.[324] Under a power granted to a city to regulate hackmen, porters, etc., a city may by ordinance prohibit their soliciting custom at the depot or on the platform of any railroad within its corporate limits.[325] An ordinance prohibiting a transfer company from soliciting business in a depot does not impair the obligation of a contract between the transfer company and the depot company, whereby the former was given the exclusive privilege of soliciting patronage in the trains and depots so far as lawful.[326]

§ 618. **The same subject continued.**—An ordinance requiring pawnbrokers to take out licenses is not authorized by a statute empowering the council to pass ordinances not inconsistent with the laws of the state and necessary to carry out the objects of the corporation.[327]

of St. Louis v. Weitzel, 130 Mo. 600; s. c. 31 S. W. 1045. There is no power to require a license from an expressman carrying parcels from a place within to a place without the city or vice versa: City of Cairo v. Adams Exp. Co., 54 Ill. App. 87. It is a legitimate exercise of police power to require all persons, dairymen or herdsmen, supplying cities, towns and villages with milk, to register their herds or cattle with a live-stock sanitary board whose duty it shall be to inspect at least annually, without notice, the premises wherein cows are kept, and if found in an unsanitary condition to prohibit the sale of milk or its shipment until such time as the premises shall conform to sanitary conditions prescribed: State v. Broodbelt, 89 Md. 565; s. c. 43 Atl. 771. A license of $10 per annum for the sale of milk is reasonable: Littlefield v. State, 42 Neb. 223; s. c. 60 N. W. 724. But power to license drays is not power to tax milk-wagons: Reading City v. Bitting, 167 Pa. St. 21; s. c. 31 Atl. 359.

[323] People v. Keir, 78 Mich. 98; s. c. 43 N. W. 1039.

[324] State v. Robinson, 42 Minn. 107; s. c. 43 N. W. 833.

[325] City of Chillicothe v. Brown, 38 Mo. App. 609.

[326] Lindsay v. Mayor &c., 104 Ala. 257; s. c. 16 So. 545.

[327] Shuman v. City of Fort Wayne, 127 Ind. 109; s. c. 26 N. E. 560, the court putting the ruling upon the principle that the right to exact that they should take out a license must be expressly conferred by statute; it not being unlawful to conduct such business, and there being no power to prohibit it in the council, they could not require of him a license as a condition precedent to carrying on the business.

But all the authorities agree that the business of the pawnbroker is a proper matter for regulation by the police power.[328] Under the police power a city council may forbid the keeping or storing of petroleum, naphtha, benzine, gasoline, or any inflammable or explosive oils, within the corporate limits in quantities greater than five barrels at a time. Licensing the sale of an article is a legitimate means of regulating its sale,[329] and the power to regulate the inspection of an article includes power to license.[330] To render a license valid there must be no discrimination between persons engaged in the same line of business. An ordinance attempting to discriminate between those having license for a dramshop and a druggist's permit is invalid.[331] There is no power to impose a license on non-residents which is not applicable to residents.[332] A license must be uniform and equal as to time. Hence a tax of $150 from the date of application to the following January is void.[333] A council may require a license of $2 on telegraph-poles under power to regulate streets,[334] but not so if the license fee is unreasonable and disproportionate.[335] A license must not only bear equally upon all affected thereby, but it must also be reasonable, but reasonableness depends on the nature of the business and other circumstances. A license of $50 per annum on pawnbrokers and $25 on junk-dealers has been held reasonable.[336] A

[328] Shuman v. City of Fort Wayne, 127 Ind. 109; s. c. 26 N. E. 560. See also, Van Baalen v. People, 40 Mich. 258; Launder v. City of Chicago, 111 Ill. 291. It is not unreasonable to require pawnbrokers, junk-dealers, etc., to keep a record of purchases and sales and furnish statement to police-department: City of Grand Rapids v. Braudy, 105 Mich. 670; s. c. 64 N. W. 29. Nor is it unreasonable to require the application to be signed by twelve freeholders certifying to the good character and reputation of the applicants: Ibid. And see City of St. Joseph v. Levin, 128 Mo. 588; s. c. 31 S. W. 101. A city may require dealers in fresh meats and dressed poultry to take out a license and prohibit the sale thereof except in a public market: State v. McMahon, 62 Minn. 110; s. c. 64 N. W. 92. The city of Forsyth, Ga., has power to require tax on livery-and sale-stable: Carson v. Mayor &c., 94 Ga. 617; s. c. 20 S. E. 116.

[329] Gundling v. City of Chicago, 176 Ill. 340; s. c. 52 N. E. 44; Farwell v. City of Chicago, 71 Ill. 269; Chicago Packing Co. v. City of Chicago, 88 Ill. 221; Kinsley v. City of Chicago, 124 Ill. 359; s. c. 16 N. E. 260.

[330] City of Cairo v. Coleman, 53 Ill. App. 680; Farwell v. City of Chicago, 71 Ill. 269; Kinsley v. City of Chicago, 124 Ill. 359, 362; s. c. 16 N. E. 260.

[331] Popel v. City of Monmouth, 81 Ill. App. 512.

[332] City of Saginaw v. Saginaw Circuit Judge, 106 Mich. 32; s. c. 63 N. W. 985.

[333] Moore v. City of St. Paul, 61 Minn. 427; s. c. 63 N. W. 1087.

[334] Postal Tel. &c. Co. v. Mayor &c., 79 Md. 502; s. c. 29 Atl. 819.

[335] City of St. Louis v. Western U. Tel. Co., 63 Fed. 68.

[336] City of Grand Rapids v. Braudy,

license may provide for revocation at the will of the council,[337] except by permission as in the ordinance provided.[338] A statute empowering city councils to regulate the use of the public streets does not authorize an ordinance that no processions shall be allowed upon the streets until a permit shall be obtained from the superintendent of police, leaving the issuance of such permits to his discretion, since the power conferred upon the council can not be delegated by them.[339] Nor was such an ordinance authorized by the grant of power in the general incorporation act "to regulate and prohibit the exhibition or carrying of banners; * * * to declare what shall be a nuisance and abate the same; * * * to prevent and suppress riots, routs, affrays, noises, disturbance, disorderly assemblies in any public or private place."[340] An incorporated town has power, under a statute authorizing it "to provide for the measuring or weighing of hay, coal," etc., to grant to individual dealers the right to set scales in the public streets in front of their places of business in such a way as not to be an obstruction to travel.[341] In Iowa the board of supervisors may employ counsel to institute an action in behalf of the county, and their right to do so is not dependent on the consent of the county attorney.[342] County supervisors in Michigan have no authority, by resolution, to vote the sheriff a salary in lieu of all

105 Mich. 670; s. c. 64 N. W. 29. And see, as to milk-dealers, Littlefield v. State, 42 Neb. 223; s. c. 60 N. W. 724.

[337] City of Grand Rapids v. Braudy, 105 Mich. 670; s. c. 64 N. W. 29. And see Economides v. Hinricks, 48 La. An. 370; s. c. 19 So. 124. May require license-plate on vehicle: City of St. Louis v. Weitzel, 130 Mo. 600; s. c. 31 S. W. 1045. A charter authorizing a city to levy a license tax on railroads is not in violation of Alabama constitution: Alabama &c. R. Co. v. City of Bessemer, 113 Ala. 668; s. c. 21 So. 64. N. J. act of March 28, 1892, does not authorize tax on groceries: Guerin v. Borough of Asbury Park, 57 N. J. L. 292; s. c. 30 Atl. 472.

[338] City of Richmond v. Dudley, 129 Ind. 112; s. c. 26 N. E. 184. The court said:—"The danger to be apprehended to life and property from the storing of inflammable or explosive substances in large quantities within the limits of a city is so great as to invite legislative control of the same by the city government."

[339] City of Chicago v. Trotter, 136 Ill. 430; s. c. 26 N. E. 359. See also, Bills v. City of Goshen, 117 Ind. 221; s. c. 20 N. E. 115; Mayor v. Radecke, 49 Md. 217; Barthet v. City of New Orleans, 24 Fed. 563; State v. Mahner, 43 La. An. 496; s. c. 9 So. 480; City of Newton v. Belger, 143 Mass. 598; s. c. 10 N. E. 464.

[340] Trotter v. City of Chicago, 33 Ill. App. 206; s. c. sub nom. City of Chicago v. Trotter affirmed in 136 Ill. 430; 26 N. E. 359. See also, Matter of Frazee, 63 Mich. 396; s. c. 30 N. W. 72; Anderson v. City of Wellington, 40 Kan. 173; s. c. 19 Pac. 719.

[341] Incorporated Town of Spencer v. Andrew, 82 Iowa 14; s. c. 47 N. W. 1007.

[342] Taylor Co. v. Standley, 79 Iowa 666; s. c. 44 N. W. 911.

statutory fees for services rendered the county, and include such salary in the yearly tax levy.[343]

§ 619. **Public offenses.**—An ordinance imposing a fine of $25 for the use of "any abusive or indecent language, cursing, swearing, or any loud or boisterous talking, holloaing, or any other disorderly conduct," is reasonable and authorized under a statutory power to abate nuisances.[344] But the same provision would not authorize an ordinance making it an offense for the occupant or owner of any room to suffer or allow prostitution therein, or males and females to cohabit therein without being lawfully married.[345] Authority to suppress bawdy-houses does not include power to provide by ordinance that "circumstances from which it may reasonably be inferred that any house is frequented by disorderly persons or persons of notoriously bad character shall be sufficient to establish that such house is a disorderly house or house of ill fame.[346] An ordinance making a mere private trespass on land penal is not authorized by a statute which confers on the common council authority to "declare what shall be considered nuisances in the * * * lots and places in said borough and remove all obstructions," etc.[347]

§ 620. **The same subject continued.**—Ordinances prohibiting the carrying of concealed weapons, disturbing the peace and selling liquor on Sunday are not "inconsistent with the laws of the state," although the prohibited acts are made offenses by general statute.[348] Author-

[343] Hewitt v. White, 78 Mich. 117; s. c. 43 N. W. 1043.

[344] State v. Earnhardt, 107 N. C. 789; s. c. 12 S. E. 426. See also, State v. Cainan, 94 N. C. 883; State v. McNinch, 87 N. C. 567; State v. Merritt, 83 N. C. 677.

[345] State v. Webber, 107 N. C. 962; s. c. 12 S. E. 598.

[346] State v. Webber, 107 N. C. 962; s. c. 12 S. E. 598. The court said this would be prescribing new rules of evidence. See also, City of Chariton v. Barber, 54 Iowa 360; s. c. 6 N. W. 528; Darst v. People, 51 Ill. 286; City of Mt. Pleasant v. Breeze, 11 Iowa 399; Wood Nuisances, §§ 740, 741; 1 Dillon Munic. Corp., §§ 309, 310.

[347] Bregguglia v. Borough of Vineland, 53 N. J. L. 168; s. c. 20 Atl. 1082.

[348] Mansf. Dig. Ark., § 764, which authorizes the passage of ordinances by cities not inconsistent with the laws of the state, to suppress disorderly conduct, provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the corporation and its inhabitants: Van Buren v. Wells, 53 Ark. 368; s. c. 14 S. W. 38. The court said:—"The only limitation upon this power is that the by-laws and ordinances must 'not be inconsistent with the laws of the state.' The ordinances in question do not fall within the limitation, and are wholesome provisions for the prosecution [promotion?] and improvement of the order and morals of the inhabitants for whose benefit they were designed, and a proper ex-

ity given to a city "to prevent and restrain disturbances" does not include the right to take jurisdiction and punish for the crime of an assault with a dangerous weapon.[349] The power given a city council to restrain and prohibit all descriptions of gambling and fraudulent devices and practices authorizes an ordinance prohibiting the keeping or setting up of any gambling device designed to be used in gambling, and imposing a penalty for its violation.[350]

§ 621. **Nuisances.**—Under a power in a charter to define and abate nuisances a city was held authorized to declare by ordinance the running at large of domestic animals a nuisance;[351] and this power was not abrogated by a statute providing that it should be lawful for stock to run at large where the inhabitants of the county adopted the stock law, which was done in the county where the city was situated. Under authority to maintain the public health and to suppress all nuisances the city of New Orleans has been held empowered to pass an ordinance prohibiting smoking in street-cars under penalty of

ercise of the power conferred." See also, Mayor &c. v. Allaire, 14 Ala. 400; Town of Bloomfield v. Trimble, 54 Iowa 399; s. c. 6 N. W. 586; 37 Am. R. 212; St. Louis v. Bentz, 11 Mo. 61; St. Louis v. Cafferata, 24 Mo. 94; State v. Williams, 11 S. C. 288; Hamilton v. State, 3 Tex. App. 643; McLaughlin v. Stephens, 2 Cr. C. C. 148; United States v. Wells, 2 Cr. C. C. 45; City of St. Louis v. Schoenbush, 95 Mo. 618; s. c. 8 S. W. 791; State v. Beattie, 16 Mo. App. 131; Brownville v. Cook, 4 Neb. 101. The court further approved the doctrine laid down by Judge Cooley that "an act may be a penal offense under the laws of the state, and further penalties, under proper legislative authority, be imposed for its commission by municipal by-laws, and the enforcement of the one would not preclude the enforcement of the other," of which the author says:—"Such is the clear weight of authority, though the decisions are not uniform:" Cooley Const. Lim. (6th ed.) 239; Hughes v. People, 8 Colo. 536; s. c. 9 Pac. 50; Wragg v. Penn Tp., 94 Ill. 11; Ambrose v. State, 6 Ind. 351; Williams v. City of Warsaw, 60 Ind. 547; Shafer v. Mumma, 17 Md. 331; Wayne Co. v. City of Detroit, 17 Mich. 390; State v. Oleson, 26 Minn. 507; s. c. 5 N. W. 959; State v. Lee, 29 Minn. 445; s. c. 13 N. W. 913; City of Linneus v. Duskey, 19 Mo. App. 20; City of Kansas v. Clark, 68 Mo. 588; Ex parte Hollwedell, 74 Mo. 395; City of St. Louis v. Vert, 84 Mo. 204; Howe v. Treasurer of Plainfield, 37 N. J. L. 145; State v. Bergman, 6 Or. 341; Greenwood v. State, 6 Baxt. (Tenn.) 567; State v. Taxing District &c., 16 Lea (Tenn.) 240; United States v. Holly, 3 Cr. C. C. 656. On similar principle, Fox v. Ohio, 5 How. 410; Moore v. Illinois, 14 How. 13; Brizzolari v. State, 37 Ark. 364; Bishop Stat. Crimes (1st ed.), § 23.

[349] Walsh v. City of Union, 13 Or. 589; s. c. 11 Pac. 312.

[350] State v. Grimes, 50 Minn. 123; s. c. 52 N. W. 42, holding a "stock clock" under the evidence to be a gambling device.

[351] City of Quincy v. O'Brien, 24 Ill. App. 591. See also, Roberts v. Ogle, 30 Ill. 459; Seeley v. Peters, 5 Gilm. (Ill.) 130.

fine and imprisonment.[352] A provision in the charter of a city empowering the mayor and council to abate nuisances public and private, and to pass all ordinances they may deem necessary for preserving the good order and good government of the city, confers on them by necessary implication authority to establish fire-limits.[353] But a city has no authority to pass an ordinance imposing a fine for the maintenance of a nuisance under a statute providing that incorporated towns shall have power to prevent injury or annoyance from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated.[354]

§ **622. Holidays, etc.**—It was held that a statute authorizing a "town" to raise money by taxation "for the purpose of celebrating any centennial anniversary of its incorporation" referred to the act which was the beginning of its corporate existence, whether as a district or as a town.[355] A city council may appropriate money for public concerts by a band under a statute authorizing the city council of the city in a manner specified to appropriate money, not exceeding a certain amount, for armories, for the celebration of holidays, "and for other purposes."[356]

§ **623. Power to purchase, lease and convey real estate.**—A city may lawfully purchase and hold all real estate necessary for corporate

[352] State v. Heidenhain, 42 La. An. 483; s. c. 7 So. 621. The court said:—"The city council of New Orleans is to a limited extent clothed with legislative authority and it is vested with that discretion within its powers common to all legislative bodies. Within the exercise of this legislative discretion it has the authority to determine what is a nuisance and to enact the necessary ordinances to suppress it." See also, Kennedy v. Phelps, 10 La. An. 227; Mayor &c. v. Gerspach, 33 La. An. 1011.

[353] Ford v. Thralkill, 84 Ga. 169; s. c. 10 S. E. 600. Under "such general welfare" clauses, said the court.

[354] City of Knoxville v. Chicago &c. R. Co., 83 Iowa 636; s. c. 50 N. W. 61. In Burdett v. Allen, 35 W. Va. 347; s. c. 13 S. E. 1012, it was held that under W. Va. code, ch. 47, § 28, empowering the council of a city to prevent cattle from going at large in the city, and § 29, empowering the passage of needful ordinances and prescriptions of fines and penalties to carry the first grant of power into effect, the council could provide for the taking up and impounding of cattle found running at large in the public streets, and for selling them to pay charges.

[355] Hill v. Selectmen &c., 140 Mass. 381; s. c. 4 N. E. 811.

[356] Hubbard v. City of Taunton, 140 Mass. 467; s. c. 5 N. E. 157. The court said:—"The word 'other' implies that the celebration of holidays is a public purpose within the meaning of the act, and indicates that purposes which are public only in that sense are included within its scope; although they look rather more obviously to increasing the picturesqueness and interest of life than to the satisfaction of rudimentary wants, which alone we generally recognize as necessary."

purposes.[357] Where the city has power to purchase land for public buildings, and does so, and having no power to sell, it can not purchase other lands not adjoining for the same purpose.[358] It may, like an individual, acquire land by adverse possession.[359] Where the constitution prohibits the state from becoming interested in any internal improvement, it is prohibitive of a city purchasing, leasing or otherwise acquiring by conveyance a street-railway.[360] Property held in trust, as water-works property, can not be sold by a city without legislative authority.[361] Where a city has power to lease land for city purposes it may lease land for a public park.[362] The right to lease to a steamship company a small portion of its water front has been recognized.[363]

§ 624. **Power to subscribe for stock.**—Without authority given in the statute or charter a municipality has no power to subscribe for stock in a private corporation, and with such power there must be found some constitutional warrant. A statute authorizing cities to take stock in a mineral corporation, organized to develop mineral resources, is unconstitutional and void;[364] but it has been held that an act which authorizes a municipality to subscribe for stock in a canal company and levy taxes to pay therefor is not unconstitutional in that it takes property without due process of law.[365] Power in the charter to take stock in chartered companies for making roads authorizes taking stock in a railroad,[366] but there must be charter power to do so.[367]

[357] Richmond &c. Co. v. Town of West Point, 94 Va. 668; s. c. 27 S. E. 460.

[358] McGuire v. Atlantic City, 63 N. J. L. 91; s. c. 42 Atl. 781.

[359] Stephens v. Murray, 132 Mo. 468; s. c. 34 S. W. 56. Commissioners having power by statute to buy land may do so under Mass. St. 1886, ch. 240, § 10: Inhabitants &c. v. Paul, 173 Mass. 148; s. c. 53 N. E. 272. Construction of N. Y. laws of 1892, ch. 466, §§ 1, 2, 8, in relation to purchase of land: Choate v. City of Buffalo, 57 N. Y. S. 383; s. c. 39 App. Div. (N. Y.) 379. Water commissioners have power under Mass. laws of 1886, ch. 240, §§ 2, 10 & 15, to purchase land which will bind the town: Inhabitants &c. v. Paul, 173 Mass. 148; s. c. 53 N. E. 272.

[360] Attorney-General v. Pingree, 120 Mich. 550; s. c. 79 N. W. 814.

[361] Huron Water Works Co. v. City of Huron, 7 S. D. 9; s. c. 62 N. W. 975.

[362] Holder v. City of Yonkers, 56 N. Y. S. 912; s. c. 39 App. Div. (N. Y.) 1.

[363] Pacific Coast S. S. Co. v. Kimball, 114 Cal. 414; s. c. 46 Pac. 275.

[364] City of Geneseo v. Geneseo &c. Co., 55 Kan. 358; s. c. 40 Pac. 655. And see, as to Kansas, Ætna L. Ins. Co. v. City of Burrton, 75 Fed. 962.

[365] Goddin v. Crump, 8 Leigh (Va.) 120.

[366] Evansville v. Dennett, 161 U. S. 434; s. c. 16 S. Ct. 613.

[367] Higgins v. City of San Diego, 115 Cal. 170; s. c. 45 Pac. 824. In South Carolina municipalities may

§ 625. Power over watercourses.—A law giving a city exclusive power to control watercourses leading to a city, and to regulate and control them within the city, where persons prior thereto had acquired paramount title, would deprive such person of property without due process of law, and is therefore void.[368] A city may lawfully use from a river within its limits such an amount of water as may be necessary to supply the wants of its citizens and of the city.[369] A town has no power to divert water from private streams to the detriment of lower riparian owners.[370] A municipality may change the flow of water and cause it to empty in the same watercourse at a different point if, in its judgment, for the benefit of the municipality, and if such change does not create a nuisance to those injured, will not be enjoined.[371]

§ 626. Power to aid private charities.—The law will not permit a municipality to invoke the power of taxation, or contribute its funds, in support of charities under private control, no matter how laudable their object. A law which provides for the treatment of habitual drunkards at the expense of the counties is for the benefit of private individuals, or a corporation, not the legitimate objects of public charity, and void.[372] It is clearly beyond corporate power to appropriate public funds in aid of private educational institutions over which the corporation has no control.[373]

take stock in railroads: Town of Darlington v. Atlantic Tr. Co., 68 Fed. 849. S. Car. laws of 1896, legalizing elections, held void in Cudd v. Calvert, 54 S. C. 457; s. c. 32 S. E. 503. There is no power to become stockholder in a corporation except on vote of three-fourths of voters participating, in Tennessee, since adoption of constitution of 1870: Fidelity &c. Co. v. Lawrence Co., 92 Fed. 576; s. c. 34 C. C. A. 553. W. Va. code 1891, ch. 39, construed with reference to aid to railroads: Neale v. County Court &c., 43 W. Va. 90; s. c. 27 S. E. 370. An act of Kan. 1887, ch. 114, authorizing counties and incorporated cities to subscribe for stock, develop coal, natural gas, etc., unconstitutional: Vail v. City of Attica, 8 Kan. App. 668; s. c. 57 Pac. 137.

[368] Fisher v. Bountiful City, 21 Utah 29; s. c. 59 Pac. 520.

[369] City of Los Angeles v. Los Angeles Water Co., 124 Cal. 368; s. c. 57 Pac. 571.

[370] Sparks Mfg. Co. v. Town of Newton (N. J.), 45 Atl. 596.

[371] Commissioners &c. v. Village of East Peoria, 75 Ill. App. 450.

[372] Wisconsin Keeley Inst. Co. v. Milwaukee Co., 95 Wis. 153; s. c. 70 N. W. 68; 36 L. R. A. 55.

[373] Whiting v. Sheboygan &c. R. Co., 25 Wis. 167, 187; State v. Tappan, 29 Wis. 664; Attorney-General v. City of Eau Claire, 37 Wis. 400, 436. See Curtis v. Whipple, 24 Wis. 350. Under N. Y. Const. 1877, a municipality can not pay money to charitable institutions wholly or partly under private control for the benefit of any inmate not therein pursuant to the rules of the state board of charities: People v. Comptroller &c., 42 N. Y. S. 657; s. c. 11 App. Div. (N. Y.) 114.

§ 627. **Miscellaneous.**—Under the power to "regulate" a city council may prohibit "the burial of the dead" within the city limits.[374] A city charter authorizing the city "to erect, repair and regulate public wharves and docks, and fix the rates of wharfage thereat," has been held not to give the city power to create a harbor or to improve one by obtaining an increased supply of water.[375] The power to fill up slips is not given to cities by an act authorizing cities to construct and keep in repair canals and slips for the accommodation of commerce.[376] County commissioners are not empowered to order the payment of attorneys' fees for services rendered to the petitioners for gravel roads under a statute which provided that "the cost and expense of the preliminary survey, proceedings and report of the improvement shall be paid out of the county treasury, and be refunded, as well as all other amounts advanced by the county for the preliminary expense of such improvement.[377] Although the statute provides for the election of a city attorney, the mayor and council of a municipal corporation may employ counsel to commence and prosecute suits for violations of city ordinances in case of vacancy in the office of city attorney.[378] Where the corporate existence is at stake the municipality has power to employ counsel to defend.[379] Where the constitution prohibits the legislature from passing any special acts conferring corporate powers, an act providing for the government management and control of fire- and police-departments in cities having a population of over forty thousand is a special act and void.[380] An agreement by which an ordinance is permitted to be violated at pleasure, made by a city council and giving assurance against prosecution by future councils, is a nullity.[381] The board of aldermen can not validate a claim which arises under a void contract.[382] A person can not by lapse of time acquire a vested right under an illegal permit.[383] Where there is no lien to contractors

[374] People v. Pratt, 129 N. Y. 68; s. c. 29 N. E. 7. See also, Cronin v. People, 82 N. Y. 318; Corporation &c. v. Mayor &c., 5 Cow. (N. Y.) 538; Coates v. Mayor &c., 7 Cow. (N. Y.) 585; In re Ryers, 72 N. Y. 1.

[375] Spengler v. Trowbridge, 62 Miss. 46, where it was held that the payment from the city treasury of money for expenses of persons to go to Washington City to influence congressional action to that end should have been enjoined.

[376] Ligare v. City of Chicago, 139 Ill. 46; s. c. 28 N. E. 934.

[377] Board &c. v. Cole, 2 Ind. App. 475; s. c. 28 N. E. 772.

[378] City of Roodhouse v. Jennings, 29 Ill. App. 50.

[379] Village of Harvey v. Wilson, 78 Ill. App. 544.

[380] State v. Downs, 60 Kan. 788; s. c. 57 Pac. 962.

[381] City of Marshall v. Cleveland &c. R. Co., 80 Ill. App. 531.

[382] Berka v. Woodward, 125 Cal. 119; s. c. 57 Pac. 777.

[383] City of Brooklyn v. Furey, 30 N. Y. S. 349; s. c. 61 N. Y. St. 287.

or subcontractors given on public buildings and no right of attachment of money in the hands of the city, the city can not provide a new remedy by attachment or trust in favor of subcontractors on money due from the city to the contractor.[384] Where the city council is sole judge of the election returns and qualification of its members, and after investigation it seats a member, a subsequent council can not review its action.[385] An ordinance providing for the sale of impounded animals is invalid if it does not provide for a judicial determination of the question of violation.[386] The city has no power to compel a citizen to buy material from it for connecting with its sewerage or pay for the work of making such connection.[387] From the fact that a municipality has power to levy taxes, acquire sites and construct such levees as are required by the public, it does not follow that it must exercise that authority in protecting low lands from overflow by natural watercourses.[388] Statutory power to establish, alter, widen, extend and vacate public parks and grounds does not authorize the construction of a county court-house in one of its parks.[389] The legislature may confirm and ratify corporate acts which are void by reason of the law being unconstitutional.[390] A city may require insurance companies to pay two per cent. of their premiums to it for the use of the fire-department. It is not a license tax, as it does not grant permission to do business.[391] It is an invasion of personal liberty to make it a penal offense to knowingly and unlawfully associate with persons having the reputation of thieves.[392]

[384] Lesley v. Kite, 192 Pa. St. 268; s. c. 43 Atl. 959.

[385] State v. City of Camden, 63 N. J. L. 186; s. c. 42 Atl. 848.

[386] Armstrong v. Brown, 20 Ky. L. 1766; s. c. 50 S. W. 17.

[387] Slaughter v. O'Berry, 126 N. C. 181; s. c. 35 S. E. 241.

[388] City of Hamilton v. Ashbrook, 62 Ohio St. 511; s. c. 57 N. E. 239.

[389] McIntyre v. Board &c., 15 Colo. App. 78; s. c. 61 Pac. 237.

[390] State v. Winter, 15 Wash. 407; s. c. 46 Pac. 644.

[391] Hartford Fire Ins. Co. v. City of Peoria, 156 Ill. 420; s. c. 40 N. E. 967.

[392] City of St. Louis v. Roche, 128 Mo. 541; s. c. 31 S. W. 915.

CHAPTER XVI.

ULTRA VIRES.

SECTION

628. General statement of the rule.
629. Purchase of land for use of a railroad.
630. Illustrations of the general rule.
631. Grant of power to regulate highways construed.
632. Contracts for exclusive privileges in highways.
633. Strictly official duties not to be confided to non-official persons.
634. Police ordinances — Wooden buildings.
635. The same subject continued—Railroad crossings.
636. The same subject continued—Markets, etc.
637. Donations.
638. The same subject continued.
639. Subscribing to stock of railroads.
640. City council as judge of elections.
641. Governing authorities of school districts.
642. The same subject continued.
643. Purchase of real estate for school purposes—Texas ruling.
644. Condemnation of land outside of territorial limits.
645. Diversion of lands dedicated to public uses.
646. Sale of real estate—Prescribed mode controls.
647. Appropriations for highways and school-buildings.
648. Power to purchase realty does not authorize giving notes.
649. Work on public buildings, etc.
650. Issuing of bonds.
651. The same subject continued—Municipal aid.
652. The same subject continued—Public improvements.
653. Contracts abrogating control of streets.
654. General legislation — Offers of rewards.
655. Contracts for water supply.
656. The same subject continued.
657. Contracts for lighting streets.
658. Grant of exclusive privileges.
659. Curative legislation.
660. Ratification.
661. Estoppel.
662. Purchasers of bonds are bound to take notice.
663. Corporations may contest ultra-vires contracts.
664. Liability upon ultra-vires contracts.
665. The same subject continued.
666. Ultra vires, when not a defense to actions by the corporation.
667. Taxpayers' resistance.
668. Taxpayers' suits.
669. The same subject continued.
670. Suits to restrain the enforcement of contracts.
671. Injunction the proper remedy.
672. The same subject continued.

§ 628. General statement of the rule.—Acts of municipal corporations which are done without power expressly granted, or fairly to be

implied from the powers granted or incident to the purposes of their creation, are ultra vires. So, also, are acts of the officers of such corporations which are done without the prescribed preliminaries to action, which are conditions precedent to their being authorized. So, also, are the acts which are specially prohibited to them by statute, or where for special reasons the power to do such acts in general is withdrawn from them in particular instances. It was held that there was no power in a city council to authorize one whose term as mayor had expired to sign bonds as of a date during his term of office.[1]

[1] Coler v. Cleburne, 131 U. S. 162; s. c. 9 S. Ct. 720. The statute provided that the bonds should be signed by the mayor. "This clearly means that they shall be signed by the person who is mayor of the city when they are signed, and not by any other person," said Justice Blatchford. In State v. Mayor &c., 54 N. J. L. 437; s. c. 24 Atl. 571, it was held that a resolution of the board of aldermen to publish, under a statute requiring it, the names, residences and places of business of persons applying for licenses to sell liquors, in a German newspaper, was void. The presumptions in such a case, where there is no express intimation in the statute as to the language in which the notice is to be given or the newspaper is to be printed, are that the legislature designed the notice to be published in the same language as the newspaper itself (see State v. Mayor &c., 54 N. J. L. 111; s. c. 22 Atl. 1004), and that the notice was to be given in the ordinary language of the state (see Road in Upper Hanover, 44 Pa. St. 277), and requires the notice to be given in English, in a newspaper printed in the same tongue. The court also sustained a taxpayer's right to intervene by certiorari to prevent this as an illegal expenditure of municipal funds, deficiencies in which must be made up by general taxation. In Citizens' Gas &c. Co. v. Town of Elwood, 114 Ind. 332; s. c. 16 N. E. 624, it was held that the Indiana act of 1887, p. 36 (Burns R. S. Ind. 1901, § 4306), with reference to natural-gas companies, forbade the grant of special privileges by special contract or license to any company; and that under the rules of common law as well as under the provisions of the statute, the subject of supplying towns and cities with natural gas must be regulated by a general ordinance, and that the ordinance must not unfairly discriminate between competing companies. The ordinance must be general in its nature and impartial in its operation. See also, Graffty v. City of Rushville, 107 Ind. 502; s. c. 8 N. E. 109; Whyte v. Mayor, 2 Swan (Tenn.) 364; City of Chicago v. Rumpff, 45 Ill. 90; Tugman v. City of Chicago, 78 Ill. 405; Ex parte Frank, 52 Cal. 606; 1 Dillon Munic. Corp. 322. In State v. Baxter, 50 Ark. 447; s. c. 8 S. W. 188, it was held that under Mansfield's Digest of Arkansas, § 1407, allowing county courts to dispose of real and personal property belonging to the county and appropriate the proceeds to the county's use, such courts are trustees of the county; and where it appears that land donated by congress to a county for public buildings was leased by such court for ninety-nine years, without regard to the statute requiring that sales of county lands should be by a commissioner appointed by the county court, and without advertising that the land was to be leased to persons

§ 629. Purchase of land for use of a railroad.—The purchase of land by a town for the use of a railroad for a right of way, though ostensibly for a public street, is ultra vires,[1a] and the purchase price can not be collected by one having knowledge of the facts and aiding in the transaction.[2]

paying an inadequate consideration therefor, such lease may be set aside by the county on the ground of fraud. See also, Andrews v. Pratt, 44 Cal. 309; United States v. Arredondo, 6 Pet. 691; § 743, post.

[1a] Strahan v. Town of Malvern, 77 Iowa 454; s. c. 42 N. W. 369. In Huesing v. City of Rock Island, 128 Ill. 465; s. c. 21 N. E. 558, it was held that while under paragraphs 83 and 84 of § 1, art. 5, of the general incorporation law of Illinois, there is conferred upon cities and villages power to prohibit slaughter-houses or any unwholesome business or establishments within the incorporation, and the common council may regulate by appropriate ordinance the location of unwholesome business, and may cleanse, abate or remove the same, this power does not authorize appropriating public funds for the erection and maintenance of a public slaughter-house. In City of St. Louis v. Bell Tel. Co., 96 Mo. 623; s. c. 10 S. W. 197, it was held that the power to regulate charges for telephone service was neither included in nor incidental to the power to regulate the uses of the streets; and that while the city, under that provision of its charter which gave the mayor and assembly power to license, tax and regulate "telegraph companies as corporations, etc., . . . and all other business, trades, avocations or professions whatever," had the power to make police regulations as to the mode in which the business of telephone companies shall be exercised, it did not derive therefrom any power to pass the ordinance regulating charges for the service; nor could it do the same under the general-welfare clause of its charter as to maintaining peace, good government, health or welfare of the city. See also, City of St. Louis v. Laughlin, 49 Mo. 559; City of St. Louis v. Herthel, 88 Mo. 128. In Tilyou v. Town of Gravesend, 104 N. Y. 356; s. c. 10 N. E. 542, 543, it was shown that a resolution was passed at a town meeting providing that the common lands of the town should be let only at public auction after notice, and that no lot should be let at a time more than one year prior to the expiration of any existing lease thereon, and providing for compensation to be made by incoming to outgoing tenants in case a lot previously under lease should be let to another than the former lessee. A later resolution amended the former one by adding thereto that the commissioners were "also authorized to renew any existing lease . . . upon terms as they may deem most advantageous for said town." It was held that the amendment did not authorize the renewal of a lease before the last year of the unexpired lease. In Millsaps v. Mayor &c., 37 La. An. 641, it was held that in the absence of special authority given in its charter or by statute a municipal corporation had no power to lease a ferry. Municipal corporations can not legally contract debts for imaginary necessities or real conveniences. They are not permitted to exercise powers not specially delegated to them in their charters unless such powers are incident to those granted or flow from them by necessary implication. See also, Lisso v. Parish of Red River, 29 La. An. 590.

[2] Mt. Adams &c. R. Co. v. City of Cincinnati, 25 Wkly. Law Bull. 91.

§ 630. Illustrations of the general rule.—In Ohio a municipal corporation has no power to borrow money except in conformity with the statute which provides that "all bonds issued under authority of this chapter shall express upon their face the purpose for which they were issued and under what ordinance," and that such bonds shall be advertised and sold at auction to the highest bidder. Therefore a contract by a city to levy an assessment to repay money advanced by an individual has been held to be void.[2a] A municipal corporation organized under the general statutes of Alabama has been held not liable in an action against it for services rendered as captain of a quarantine guard under a contract made with the intendant.[3] A municipal corporation can not any more than any other corporation or private person escape the taxes due on its property, whether acquired legally or illegally, and it can not make its want of legal authority to engage in a particular transaction or business a shelter from the taxation imposed by the government on such business or transaction by whomsoever conducted.[4] In New Hampshire it has been held that as a town has possession of the volumes of New Hampshire reports, statutes, pamphlet laws, and other books and documents by law distributed to the several towns for the use of its inhabitants, and to enable them and its officers to become informed of the laws and official business of the state, it has no power nor can its selectmen lawfully make any disposition or use of the books inconsistent with that object.[5]

[2a] Mt. Adams &c. R. Co. v. City of Cincinnati, 25 Wkly. L. Bul. (Ohio) 91.

[3] New Decatur v. Berry, 90 Ala. 432; s. c. 7 So. 838. These general statutes neither gave the town authorities expressly the power to make quarantine regulations, nor could such power be implied; neither was it incident to the power granted or the objects and purposes of the corporation. Therefore, the contract of employment of a guard was an act ultra vires, and not binding upon the town; and an attempt to ratify the contract of the intendant was also futile.

[4] Salt Lake City v. Hollister, 118 U. S. 256; s. c. 6 S. Ct. 1055—an action instituted by the city to recover taxes which it claimed to have paid under protest to a collector of United States internal-revenue taxes on account of liquors distilled by the city; the city basing its right to recover upon the claim that as it had no power to engage in this business it was not legally bound to pay the taxes. See also, McCready v. Guardians &c., 9 S. & R. (Pa.) 94.

[5] Litchfield v. Parker, 64 N. H. 443; s. c. 14 Atl. 725—an action to test the right of an attorney in another town to retain those books for his own use by an arrangement he had made with the selectmen. In City of Fort Wayne v. Shoaff, 106 Ind. 66; s. c. 5 N. E. 403, it was held that the common council of the city had no jurisdiction to assess the cost of improving property owned by the city for market purposes upon adjoining property-owners, the jurisdiction in such matters extending only to streets and alleys, and not to property owned by the city for other

§ 631. Grant of power to regulate highways construed.—A city has no power through its city council to prohibit circulating, distributing or giving away circulars, hand-bills or advertising-cards of any description in or upon any of its public streets or alleys, as it is neither expressly conferred nor to be fairly implied from a charter providing for cleaning the highways, for the prevention of obstructions thereon, and conferring power to regulate their use.[6]

municipal purposes. Therefore the proceedings here were void, and injunction was the appropriate remedy. See also, Goring v. McTaggart, 92 Ind. 200; Wilson v. Poole, 33 Ind. 443. The provisions of a contractor's bond that he shall pay for all labor and material for city work, and comply with a certain ordinance for the protection of subcontractors, is not ultra vires on the part of the city: Philadelphia v. Stewart, 195 Pa. St. 309; s. c. 45 Atl. 1056. Appropriations to charitable institutions are not based on a contract express or implied and are ultra vires: State v. City of New Orleans, 50 La. An. 880; s. c. 24 So. 666.

[6] People v. Armstrong, 73 Mich. 288; s. c. 41 N. W. 275. In State v. Johnson, 41 Minn. 111; s. c. 42 N. W. 786, it was held that a charter which authorized the city council by the proper ordinance to restrain the running at large of cattle and other domestic animals within the city limits did not authorize an ordinance providing a penalty for trespasses committed by herdsmen and stock-owners in herding their cattle upon the lands of private owners. In State v. Hammond, 40 Minn. 43; s. c. 41 N. W. 243, an ordinance of a city imposing a penalty upon "any person who commits any act of lewdness or indecency within the limits of said city" was held to be void as in excess of the power vested in the city council by the city charter. The power to enact this ordinance, it was claimed, was conferred by the section which authorized the passage of ordinances "for the government and good order of the city, for the suppression of vice and intemperance, and for the prevention of crime;" and "to prevent open or notorious drunkenness and obscenity in the streets or public places of this city." The court said:—"[These sections of the charter refer] only to such [acts] as may affect the public peace, decency and good order; and do not authorize punishment for private conduct, however reprehensible it may be in the matter of morals." In State v. Mayor &c., 52 N. J. L. 65; s. c. 18 Atl. 586, 696, it was held that the common council of that city, under its power to pass ordinances to regulate or prevent the use of streets for any other purposes than public travel, had no power by ordinance to confer upon a railroad company a right to occupy exclusively twelve feet of a street by the erection thereon of a freight-platform and roof. This was an appropriation of the public highway to private interests, of which Justice Van Syckle, in State v. Inhabitants &c., 36 N. J. L. 79, thus speaks:—"An appropriation of [streets] to private individual uses, from which the public derived no convenience, benefit or accommodation, is not a regulation but a perversion of them from their lawful purposes, and can not be regarded as an execution of the trust imposed in the city authorities." So in Metropolitan &c. Co. v. Newton, 4 N. Y. S. 593; s. c. 51 Hun (N. Y.) 639, it was held that the common council had no power

§ 632. Contracts for exclusive privileges in highways.—A municipal corporation can bind itself only by such contracts as it is by statute authorized to make. It has no power to grant exclusive privileges to put mains, pipes and hydrants in its streets, nor can it lawfully by contract deny to itself the right to exercise the legislative powers vested in its common council.[7] Public policy will not permit the inference of authority to make a contract inconsistent with the continuously operative duty to make such by-laws, rules and regulations as the public interest or welfare of a city may require.[7a]

to appropriate any portion of any street to private use to the exclusion of the public, and a license from the council to use and occupy a street for amusement purposes was void.

[7] Syracuse Water Co. v. City of Syracuse, 116 N. Y. 167; s. c. 22 N. E. 381; 5 L. R. A. 546; 26 N. Y. St. 364; 29 Am. & Eng. Corp. Cas. 307.

[7a] Milhau v. Sharp, 27 N. Y. 611; Mayor &c. v. Second Ave. R. Co., 32 N. Y. 261; Richmond Co. &c. Co. v. Town of Middletown, 59 N. Y. 228; Gale v. Village of Kalamazoo, 23 Mich. 344; s. c. 9 Am. R. 80; Logan v. Pyne, 43 Iowa 524; s. c. 22 Am. R. 261; Des Moines Gas Co. v. City of Des Moines, 44 Iowa 505; s. c. 24 Am. R. 756; Norwich &c. Co. v. Norwich City Gas Co., 25 Conn. 19. In School Dist. v. Sullivan, 48 Kan. 624; s. c. 29 Pac. 1141, it was held that a contract for building a schoolhouse, void because made by only one member of the school board, may be ratified and made binding by the action of the school district in completing the building left unfinished by an absconding contractor, by the furnishing the same with seats, desks and other necessary schoolhouse furniture, by occupying the same for school purposes and by insuring the same. In Widner v. State, 49 Ark. 172; s. c. 4 S. W. 657, it was held that the school directors have no power to authorize the cutting of timber from school lands. In Fluty v. School Dist., 49 Ark. 94; s. c. 4 S. W. 278, a contract made with the directors of the school district for building a schoolhouse under authority conferred at a special meeting of the electors of the district held in June was held to be void, and no recovery could be had upon it because they had no power to build a schoolhouse under the statutes unless authorized to do so by the annual meeting on the third Saturday in May: Mansf. Dig. Ark., §§ 6197, 6199, 6210, 6213, 6223. See also, Argenti v. City of San Francisco, 16 Cal. 255; s. c. Field Ultra Vires 352. In Everts v. District Tp. &c., 77 Iowa 37; s. c. 41 N. W. 478, it was held that if a school board exceeded its powers in making a contract the action of the electors in authorizing a settlement of the controversy growing out of it was a ratification of their act, and the direction of a verdict against the district for the amount agreed to be paid by the compromise settlement was sustained. In Buchanan v. School District, 25 Mo. App. 85, the court held that the directors of a school district of a town, incorporated under the school law, should be enjoined from changing the site of a schoolhouse or from building a new schoolhouse on a new site without having first obtained the sanction of the voters at an election held therefor under the law, that being the sole mode in which it could be done. See also, Newmeyer v. Missouri &c. R. Co., 52 Mo. 81; Ranney v. Bader, 67 Mo. 476, 479; Ruby v. Shain, 54 Mo. 207.

§ 633. Strictly official duties not to be confided to non-official persons.—A contract made by a municipal corporation with one of its officers for the collection of taxes in arrears during an indefinite period, under terms which are onerous to the corporation, is ultra vires when the corporation relieves one of its officers from the duty of collection, which is one of his functions without additional pay.[8] A city charter authorized the council to make ordinances for certain purposes, and to "make any other by-laws and regulations which may seem for the well-being of said city," with "power to provide for the appointment or election of all necessary officers for the good government of the city not otherwise provided for," etc. It was held that a city council could not deprive a board of supervisors of the power of determining when they would choose one of themselves clerk of the board.[9]

§ 634. Police ordinances—Wooden buildings.—An ordinance of a city prohibiting the owners of a wooden building within the fire-limits from repairing the roof with the same materials with which it was covered at the date of the passage of the ordinance has been held void, as being ultra vires, and not enforceable.[10]

[8] Gurley v. City of New Orleans, 41 La. An. 75; s. c. 5 So. 659.

[9] Weeks v. Dennett, 62 N. H. 2. This incidental power was left to the discretion of the board of assessors by the legislature and can not be controlled by the city. In Dickinson Hardware Co. v. Pulaski Co., 55 Ark. 437; s. c. 18 S. W. 462, it was held that the county was not liable on an order of the county judge guaranteeing payment for goods to be sold a person who had a contract for the construction of a turnpike for the county. He had no power to give such a guaranty. In Sexton v. Cook Co., 114 Ill. 174; s. c. 28 N. E. 608, it was held that where a county board, in the exercise of the power which it has to clothe its officers, or agents, or committees, by resolution or vote, with power to act for it, by resolution directed a party to build so much of the dome of a court-house in process of erection as was necessary to inclose the building, under the architect's supervision and subject to his valuation of the same, the architect under this resolution had authority only to supervise the work directed to be done and make a schedule of prices for the same, and that any order of the architect for work outside of the terms of the resolution was not binding on the county: Dillon Munic. Corp., § 450; Rice v. Plymouth Co., 43 Iowa 136; Bouton v. Board &c., 84 Ill. 384.

[10] State v. Schuchardt, 42 La. An. 49; s. c. 7 So. 67. The court said:—"Now the power in a municipal corporation to control the owners of property within its limits in using or building their property in the manner different from their inclination, desire or convenience, can not be ranked among the implied and incidental powers which such corporations may exercise in the absence of express legislative mandate. It is a useful power, presumably necessary to provide for the greatest good of the greatest number; but it is at the same time a power in derogation

§ 635. The same subject continued—Railroad crossings.—A municipal corporation has not the power by ordinance to compel a railroad company to maintain at a street crossing within the corporate

of common right, and unless it be expressly conferred it will never be presumed to exist." See also, Succession of Irwin, 33 La. An. 63. In Coonley v. City of Albany, 57 Hun (N. Y.) 327; s. c. 32 N. Y. St. 411; 10 N. Y. S. 512, it was held that an ordinance of the city council with reference to boats sunken at the dock, wharf, slip or anywhere in the Hudson river opposite the city of Albany, so far as it authorized a sale of the boat in a certain contingency was ultra vires, as the city was only authorized to enforce its ordinances by ordinary penalties for their violation. See also, Hart v. Mayor &c., 9 Wend. (N. Y.) 571. In Hoey v. Gilroy, 37 N. Y. St. 754; s. c. 14 N. Y. S. 159, an iron awning one hundred and ten feet long, supported by iron pillars placed along the inside of the curbstone, the roof being ten feet above the sidewalk, was held to be essentially a permanent structure, and an unlawful encroachment upon the highway, as the common council of the city of New York had no power under the consolidation act to authorize the erection or maintenance of such a structure. In Trenor v. Jackson, 15 Abb. Pr. (N. S.) (N. Y.) 115, Monell, J., said:—"It is claimed that the power given by the charter to pass ordinances for the regulation of the use of the sidewalks for awnings, etc., necessarily implies a power to allow or permit the continuance of awnings by individuals for private purposes. The difficulty in the position is that, even if it was competent for the legislature to give such power, it is not given in express terms, and being subversive of clear public right it can not and should not be implied. It is, I think, very clear that a trust, created by law for a strictly public purpose, can not be diverted from such purpose and converted into a private use. But, even if it can be at all, it must be done by express enactment and never can be inferred from or as being incidental to other powers." See also, People v. Mallory, 46 How. Pr. (N. Y.) 281; Kingsland v. Mayor &c., 110 N. Y. 569; s. c. 18 N. E. 435; 18 N. Y. St. 701; People v. Baltimore &c. R. Co., 117 N. Y. 150; s. c. 22 N. E. 1026; 27 N. Y. St. 153; Farrell v. Mayor &c., 20 N. Y. St. 12; s. c. 5 N. Y. S. 672; s. c. affirmed in 22 N. Y. St. 469; 5 N. Y. S. 580; People v. Mayor, 18 Abb. N. C. (N. Y.) 123; Ely v. Campbell, 59 How. Pr. (N. Y.) 333; People v. Mayor, 59 How. Pr. (N. Y.) 277; Story v. New York &c. R. Co., 90 N. Y. 122; Lahr v. Metropolitan &c. R. Co., 104 N. Y. 268; s. c. 10 N. E. 528. In Turner v. Mayor &c., 78 Ga. 683; s. c. 3 S. E. 649, it was held that after the passage of an act prohibiting the sale of spirituous or malt liquors in the county in which the city was situate, a section of which provided "that the provisions of this act shall not prevent practicing physicians furnishing liquors themselves as medicines to the patients under treatment by them," the mayor and council of the town had no authority to pass an ordinance directing that all physicians practicing medicine therein should make monthly returns to the council, giving a monthly statement of their business, and for whom they furnished liquor, and providing a penalty for failing to comply with such ordinances. All power under the charter of the town as to regulating the liquor traffic was taken from it by the general law prohibiting its

limits a watchman for the purpose of giving warning to passers-by of the approach of trains.[11]

sale. Besides, its power under the charter to regulate barrooms and saloons did not include the power to regulate physicians and require returns from them as to their practice and to whom they furnished liquors. At the same time the court held there was no error in refusing the writ of prohibition, as there was a remedy by a defense before the mayor and council, and if adverse to the petitioners a writ of certiorari was their right to review the case.

[11] Ravenna v. Pennsylvania Co., 45 Ohio St. 118; s. c. 12 N. E. 445, this not being a power which may be implied as essential to carry into effect those expressly granted, and not being expressly granted to the corporation. In Grand Rapids &c. Co. v. Grand Rapids &c. Co., 33 Fed. 659, it was held that an ordinance granting exclusive use of the streets for wires and poles for electric lights for fifteen years was ultra vires and void. The city charter which gave the council power to make, amend and repeal any ordinance deemed desirable for lighting the streets and taking charge of them did not confer in express terms exclusive power over them, and it did not give the city, by implication, control of the streets to the exclusion of the sovereign power of the state. In James v. City of Darlington, 71 Wis. 173; s. c. 36 N. W. 834, an ordinance vacating a street at a certain point without first having a petition of the lot-owners at that point in favor of it, and posting notice as required by the statute conferring the power to vacate streets, was held to be invalid and ineffectual; that without those preliminary steps there was no jurisdiction or power in the council to vacate the street. In City of Burlington v. Dankwardt, 73 Iowa 170; s. c. 34 N. W. 801, it was held that the passage of an ordinance to prevent the pedling of meats in the streets of the city was beyond the powers of the city authorities—they not being entitled to go beyond the power given by statute to establish and regulate markets. In City of St. Paul v. Gilfillan, 36 Minn. 298; s. c. 31 N. W. 49, it was held that an ordinance passed by the city council, declaring the emission of dense smoke from smokestacks and chimneys a public nuisance, was unauthorized and void, as the charter of the city conferred no power upon the city council to declare what acts or omissions should constitute a nuisance; distinguishing Harmon v. City of Chicago, 110 Ill. 400, 411. In City of Newton v. Belger, 143 Mass. 598; s. c. 10 N. E. 464, it was held that in passing an ordinance as follows: "No person shall erect, alter or rebuild, or essentially change any building or any part thereof, for any purpose other than a dwelling-house, without first obtaining in writing a permit from the board of aldermen. The application for such permit shall specify the location and size of the building, the material of which it is to be constructed, and the use for which it is intended,"—the governing authorities exceeded the powers conferred upon the city by the legislature and imposed unauthorized restrictions upon the right of the citizen to the use of his property. The ordinance was broader in its scope than the statute providing that any city or town except Boston "may, for the prevention of fire and the preservation of life, by ordinances or by-laws not repugnant to law and applicable throughout the whole or any defined part of its territory, regulate the inspection, ma-

§ 636. The same subject continued—Markets, etc.—Under a statute granting to the mayor and council the "power to erect and regulate markets," and providing that "the mayor and city council may lease, sell or dispose of the stalls and stands in any market in any manner and for any term they may think proper," the governing power of a city can not set apart by ordinance a certain portion of the market for the sale of any class of products—as various kinds of fish—and require a license fee to be paid by every one before engaging in that business in the market.[12] An ordinance of a city to compel a bridge company to sell one hundred tickets for $1, according to its contract with the corporation, was held void as not relating to the morals, health or safety of the people.[13] A provision in an act of a legislature conferring the power on a city council to "license, tax and regulate grocers, merchants, retailers," etc., confers no power to prohibit the sale of liquors.[14]

§ 637. Donations.—A county has no power to donate its lands to a railroad company in consideration of its constructing a railroad through the county. And the legislature having no power to authorize such a donation in the first instance can not by a subsequent statute validate a conveyance of lands in pursuance of such a donation.[15] A town council has no power to appropriate funds of the

terials, construction, alteration and use of buildings and other structures within its limits," under which statute it was claimed the city had such power.

[12] State v. Rowe, 72 Md. 548; s. c. 20 Atl. 179. This was an effort to raise revenue under the guise of exercising the police power, and the ordinance was, therefore, void. Under the rule in Van Sant v. Harlem Stage Co., 59 Md. 330, which was that "if under the guise of licensing and regulating, the municipal corporation should attempt to raise revenue or clearly violate the rule requiring a reasonable exercise of its powers, the courts will declare such ordinances unlawful and void," the court in State v. Rowe, supra, construed the statutes to give to the city authorities as the owners of the market-houses the power only of selling and leasing the stalls in their buildings as they may judge best; and the power to regulate the markets was held to intend to give reasonable police powers with reference thereto. The taxing power belongs to the legislature, and it will not be held as conferred on a municipal corporation unless it be by express and unequivocal language, or by necessary implication.

[13] City of Newport v. Newport &c. Co., 90 Ky. 193; s. c. 13 S. W. 720; 12 Ky. L. 39; 8 L. R. A. 484; 29 Am. & Eng. Corp. Cas. 491. Passing the ordinance was not an exercise of police power but related merely to a contract in respect to a financial matter.

[14] Ex parte Reynolds, 87 Ala. 138; s. c. 6 So. 335; 29 Am. & Eng. Corp. Cas. 1. See also, Miller v. Jones, 80 Ala. 89.

[15] Ellis v. Northern Pac. R. Co., 77 Wis. 114; s. c. 45 N. W. 811. See also, Whiting v. Sheboygan &c. R. Co., 25 Wis. 167, holding that the

town to aid in building a county court-house therein.[15a] A town can not ratify and validate what it has previously done without authority, and what is absolutely void for that reason.[16] It is not within the power of a city to bind itself by contract either to forbear to impose taxes or to impose them under certain given limitations or on certain conditions.[16a]

§ 638. **The same subject continued.**—A city has no power to convey its real estate to the county in which it is located, in consideration

power of taxation could not be exerted to raise money for the purpose of donating it to a railroad company, even when the legislature authorized it. Approved in Phillips v. Town of Albany, 28 Wis. 340; Rogan v. City of Watertown, 30 Wis. 259; Bound v. Wisconsin Cent. R. Co., 45 Wis. 543. The court in Ellis v. Northern Pac. R. Co., supra, referring to the Whiting case, supra, said:—"In that case the county authorities were restrained from issuing negotiable securities, which created a county debt to be paid by taxation, though the court had, upon the strength of adjudications elsewhere, sustained the validity of municipal subscriptions to the stock of railroad corporations. But such subscriptions were sustained solely on the ground that their validity had been affirmed by many of the highest and most respectable courts in the land, and such vast pecuniary interests had become involved and were dependent upon these decisions that the court felt bound to follow them while regarding as unsound the principle which they laid down. And while the distinction between a stock subscription and the donation or other appropriation of public money or corporate property to a railroad corporation is not very distinct and obvious, yet we are unwilling to extend a bad rule of law a particle beyond where the courts had carried it, and shall, therefore, adhere to the doctrine of the Whiting case."

[15a] Russell v. Tate, 52 Ark. 541; s. c. 13 S. W. 130; 7 L. R. A. 180.

[16] Dullanty v. Town of Vaughn, 77 Wis. 38; s. c. 45 N. W. 1128.

[16a] Augusta Factory v. City Council &c., 83 Ga. 734; s. c. 10 S. E. 359. See also, State v. Hannibal &c. R. Co., 75 Mo. 208; Mack v. Jones, 21 N. H. 393; Cooley Taxation 200; Desty Taxation 466. In Gray v. Baynard, 5 Del. Ch. 499, it was held that while the legislature had conferred upon the city council of Wilmington very full powers touching its public streets, it was not competent for the city council to authorize the erection of a private building in such a manner as to create a public nuisance. In Snyder Tp. v. Bovaird, 122 Pa. St. 442; s. c. 15 Atl. 910; 22 W. N. C. (Pa.) 563, it was held that the supervisors of a township have no power to give to the assignee of a township order a new order in his own name as a substitute for the old one. In State v. Harris, 96 Mo. 29; s. c. 8 S. W. 794, it was held that a subscription to stock of a railroad company by a county court for the county, where it appeared that two-thirds of the qualified voters of the county, at a regular or special election, had not assented to such subscription, which was required by general statutes of Missouri, 1865, p. 338, § 17, to authorize such subscription, was without authority and void. County courts in this state are only the agents of the counties.

of the location of the county-seat in such city.[17] A municipal corporation can not incur a liability and levy and collect taxes on the property of a citizen to aid in the development of mere private enterprises.[18]

§ 639. **Subscribing to stock of railroads.**—Acts authorizing appropriations by towns and cities as aid to railroad corporations in consideration of their constructing the roads through their limits if approved by a majority of the electors of the town or city, but also requiring the authorities of the corporation "to levy and collect a tax and make such provisions as may be necessary and proper for the prompt payment of the appropriation," neither expressly nor by implication invest such corporations with the power to issue commercial

[17] Brockman v. City of Creston, 79 Iowa 587; s. c. 44 N. W. 822; 29 Am. & Eng. Corp. Cas. 69. The rule is thus stated by the Iowa court:—"[Cities] have power to dispose of their real property for purposes authorized by law and for no other purpose. The purpose of the disposition of lands determines the question of authority. A city may sell its lands when its interests require that they be sold; but it possesses no authority to give away, or to convey without consideration, or for a purpose which it has no authority to advance, any of its property." See also, District Tp. v. Thomas, 59 Iowa 50; s. c. 12 N. W. 767.

[18] Maher v. City of Ottawa, 114 Ill. 659; s. c. 3 N. E. 216; 2 West. R. 46, holding that the city had no power to incur a debt and issue bonds, and levy and collect taxes for the payment of bonds issued to raise money to build a dam across a river within its limits, for the purpose of introducing the water of such river into the city, with the view of developing the natural advantages of the city for manufacturing purposes. See also, as to such power being confined to corporate purposes, Johnson v. Campbell, 49 Ill. 316; Harward v. St. Clair &c. Co., 51 Ill. 130; County Court v. People, 58 Ill. 456; People v. Du Puyt, 71 Ill. 651, 653; Johnson v. Stark Co., 24 Ill. 75 (where the court said:—"All will perceive that the building of our court-houses, jails, poor-houses, the opening and keeping in repair of common highways, and the erection and maintenance of bridges, by which they are rendered useful to the people, are 'county purposes' for which the people of the county may be taxed; and that the erection of hotels, mercantile, manufacturing, trading and banking houses, although of great importance to the prosperity of the community, are not such purposes as were contemplated by the constitution. These are properly regarded as matters of individual enterprise and can not, in any reasonable or just sense, be regarded as public or county purposes"); Bissell v. City of Kankakee, 64 Ill. 249 (holding city bonds issued to aid a company so as to enable it to embark in the manufacture of linen fabrics in the city to be void); English v. People, 96 Ill. 566 (holding that a city tax levied to pay bonds issued in aid of a manufacturing company could not be enforced); Ohio Val. I. Works v. Moundsville, 11 W. Va. 1; Loan Ass'n v. Topeka, 20 Wall. 655. In Ottawa v. Carey, 108 U. S. 110; s. c. 2 S. Ct. 361; 27 L. ed. 669, the bonds were held to be void.

paper in payment of an appropriation so voted.[19] The adoption of the constitution of 1870 in Illinois, which provides that "no county, city, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of such corporations," withdrew from municipal corporations all power to subscribe to stock or make donations except in cases where they had before its adoption, as the law then existed, been authorized to do so by a vote of the people of such municipalities. In that case they could complete the matter.[20]

§ 640. **City council as judge of elections.**—A statute describing the duties and powers of a city council, declaring that it shall "be the judge of the election and qualification of its own members," does not confer upon such council the power to hear and determine a contest of an election for the city marshalship; nor does it include the power to enact ordinances for such purpose.[21]

[19] Concord v. Robinson, 121 U. S. 165; s. c. 7 S. Ct. 937, holding bonds issued by the town invalid. See also, Claiborne Co. v. Brooks, 111 U. S. 400, 406; s. c. 4 S. Ct. 489; Wells v. Supervisors, 102 U. S. 625, 631, 632; Ogden v. Daviess Co., 102 U. S. 634, 639.

[20] Concord v. Robinson, 121 U. S. 165; s. c. 7 S. Ct. 937. See also, Town of Middleport v. Ætna Life Ins. Co., 82 Ill. 562, 568; Aspinwall v. Daviess Co., 22 How. 364; Wadsworth v. Supervisors, 102 U. S. 534. In Hardin Co. v. Louisville &c. R. Co., 92 Ky. 412; s. c. 14 Ky. L. 401; 17 S. W. 860, it was held that the presence of one of the sinking-fund commissioners of the county at a meeting of the stockholders of the railroad corporation, when a resolution was passed declaring a stock dividend for the purpose of stopping interest on payment of stock subscriptions, and his action in voting for the resolution being unauthorized either by statute, by the county court or by the county commissioners, did not estop the county from demanding interest on a stock subscription it had made up to the time when a cash dividend was declared.

[21] Vosburg v. McCrary, 77 Tex. 568; s. c. 14 S. W. 195. This last was claimed under revised statutes of Texas, 342, that municipal corporations "may ordain and establish such acts, laws, regulations and ordinances not inconsistent with the constitution and laws of this state as may be needful for the government, interest, welfare and good order of said body politic;" and § 418, that "the city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations not contrary to the constitution of this state for the good government, peace and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government or in any department or officer thereof." To this the court said:—"The power of a municipal corporation or of a city council can not exceed that conferred by the charter and all ordinances must be in subordination

§ 641. Governing authorities of school districts.—Town trustees having authority to "build or otherwise provide suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management" of schools, can not purchase, at the expense of the township, text-books for the use of the pupils attending the public schools of the township.[22]

thereto. Ordinances when authorized by the charter are but municipal laws intended to regulate and provide for the orderly exercise of powers conferred by the charter." In Gregory v. Mayor &c., 113 N. Y. 416; s. c. 21 N. E. 119; 22 N. Y. St. 703, it was held that the power of a board of commissioners to remove employes did not include the power to suspend indefinitely and without pay. The position of the court was, that there is nothing in the power to remove or expel which necessarily and in all cases includes the power to suspend, and the latter power may not be implied from the mere grant of the former. Shannon v. Portsmouth, 54 N. H. 183, distinguished. See also, State v. Lingo, 26 Mo. 496; State v. Chamber of Commerce &c., 20 Wis. 63; State v. Common Council &c., 25 N. J. L. 536.

[22] Honey Creek School Tp. v. Barnes, 119 Ind. 213; s. c. 21 N. E. 747, in which Jackson School Tp. v. Hadley, 59 Ind. 534, where the indebtedness was for Webster's Dictionaries, is distinguished. In State v. Mayor &c., 49 N. J. L. 308; s. c. 8 Atl. 114, it was held that schoolhouses were not included in the expression "public buildings" in § 79 of the charter of Bayonne, which authorizes the mayor and council to purchase sites, markets, public buildings and wharves, and to erect suitable buildings or wharves, or other structures or improvements on said sites and for said purposes, or for the purpose of purchasing sites for schoolhouses, to issue bonds; therefore, a resolution to issue bonds to enlarge a schoolhouse was illegal. In Roseboom v. Jefferson School Tp., 122 Ind. 377; s. c. 23 N. E. 796, it was held that a contract made by a township trustee for building a schoolhouse beyond the fund in hand, and that to be derived from the tax levy for the year, without an order from the board of county commissioners, was without authority. See also, Middleton v. Greeson, 106 Ind. 18; s. c. 5 N. E. 755. In Briggs v. Borden, 71 Mich. 87; s. c. 38 N. W. 712, the action of school inspectors in the destruction by division of a school district and attaching the parts to other districts, without having obtained the consent of a majority of the resident taxpayers of the district, which was required by Howell's statutes of Michigan, § 5041, before such division could be made, was decreed to be null and void for lack of authority. See also, Doxey v. Board &c., 67 Mich. 601, 604; s. c. 35 N. W. 170. 172. In Dartmouth Sav. Bank v. School Districts, 6 Dak 332; s. c. 43 N. W. 822, it was held that a petition by a majority of the districts affected being a condition precedent to the establishment of a new district, the formation of a new district by the county superintendent. under Dakota police code of 1877, ch. 40, relating to the division of school districts and rearrangement of their boundaries, without such a petition, would be beyond his authority. Also, that districts which are its successors would not be

§ 642. **The same subject continued.**—Under an act conferring power on school trustees to lay out roads, streets and alleys, the power of school trustees was confined to cases where they laid out school lands into town or village lots. In other cases they had no power to lay out roads or to appropriate or dedicate any part of such land for public highways.[28]

estopped to deny the incorporation of their predecessor by showing a failure to present such a petition in an action upon a bond of this predecessor. In Farmers' &c. Bank v. School Dist., 6 Dak. 255; s. c. 42 N. W. 767, the court held that the power to select a site for a schoolhouse belonged alone to the legal voters of the district, under the Dakota statutes, and until they have selected it by vote the district board has no authority whatever to acquire the site or erect a schoolhouse. And in this case the school district was held not to be liable on warrants issued without authority by the board of directors for the purchase of a school site.

[28] Seeger v. Mueller, 133 Ill. 86; s. c. 24 N. E. 513; affirming s. c. 28 Ill. App. 28, holding that any attempt of the school trustees to lay out a road was ultra vires and void. The court said:—"The power granted by [these] sections [of the act] to trustees of schools will not be extended by implication, but in determining their extent and scope a strict interpretation will be adopted. The thirtieth section of [the] act declares trustees of schools bodies corporate and politic, thus constituting them municipal or quasi-municipal corporations, and the same rule of interpretation should apply to the statute from which they derive their powers which obtains in case of other municipal corporations. Such bodies act wholly under a delegated authority, and can exercise no powers which are not in express terms or by fair implication conferred upon them." See also, Buchanan v. School Dist., 25 Mo. App. 85; Thompson v. Lee Co., 3 Wall. 327; Minturn v. Larue, 23 How. 435. Revised statutes of Maine, ch. 11, § 1, forbid the alteration of school districts except upon the recommendation of municipal and school officers. In Parker v. Titcomb, 82 Maine 180; s. c. 19 Atl. 162, it was held that an attempt, in the absence of such recommendation, to alter by uniting or disuniting, was ultra vires. In State v. Compton, 28 Neb. 485; s. c. 44 N. W. 660, it was held that the presentation of a petition in writing duly signed to a county superintendent of schools being necessary to give him jurisdiction to detach a part of the territory of a school district and attach the same to an adjoining district, a change of the boundaries of districts in that respect without such petition was without authority. The court said:—"The duties of superintendents are alone those prescribed in the statute." See also, State v. County Board &c., 20 Neb. 595; s. c. 31 N. W. 117 (where it was held that the board of equalization of taxes of a county possessed no powers save those conferred by statute, and that the filing of a complaint was necessary to give it jurisdiction to increase the valuation of a taxpayer's property, and unless this appeared upon the face of the proceedings there was no authority to act); People v. Flint, 39 Cal. 670; People v. Goldtree, 44 Cal. 323; Black v. Cornell, 30 Mo. App. 641 (where it was held that no power exists in a board

§ 643. Purchase of real estate for school purposes—Texas ruling.—An incorporated town in Texas exceeds its powers by contracting to issue its bonds in the purchase of grounds for public free school purposes. Should such a town afterwards, by adopting the provisions of the statutes, become under general law a city, the purchase of such grounds would not be ratified by this act of adoption of the permission of the statute and becoming a city.[24]

§ 644. Condemnation of land outside of territorial limits.—Proceedings by a village to condemn land outside of its jurisdiction are unlawful unless the village charter expressly gives the power to do so. A power can not be implied where by the proceedings it is proposed to take land against the will of the owners.[25]

of public-school directors, without authority from the voters of the district, to rent buildings or rooms separate from the district schoolhouse, and to employ teachers for a supplemental school therein); Seibert v. Botts, 57 Mo. 430; Board of Education v. Roehr, 23 Ill. App. 629 (where it was held that a school district having become organized under revised statutes of Illinois, ch. 122, § 80, the board of education had no power to enter into a contract for the erection of a schoolhouse without a petition of a majority of the voters of a district).

[24] City of Waxahachie v. Brown, 67 Tex. 519; s. c. 4 S. W. 207. See also, Robertson v. Breedlove, 61 Tex. 316, where it was held that commissioners' courts, though charged with the duty of providing court-houses, could not issue bonds for that purpose in absence of an express legislative grant. In City of Waxahachie v. Brown, supra, the court said:—"The power to borrow money or to create debt is not a necessary incident of the power to buy grounds and build schoolhouses, and hence should not be implied against the spirit and policy so clearly manifested by contemporaneous legislation as well as by the organic law in force at the time this legislation was enacted." It was also held that the city had no power to ratify a purchase involving the issuance of bonds in contravention of the authority of the town when the contract was made, and which, if ratified, would involve the issuance of bonds in excess of the amount the city could lawfully issue.

[25] Common Council &c. v. Huron Copper Min. Co., 57 Mich. 547; s. c. 24 N. W. 820. See also, Dillon Munic. Corp., § 469; Cooley Const. Lim. 528–541; Kroop v. Forman, 31 Mich. 144; Detroit &c. Ass'n v. Highway Com'rs, 34 Mich. 36; Powers' Appeal, 29 Mich. 504; Specht v. City of Detroit, 20 Mich. 168; Wright v. Town of Victoria, 4 Tex. 375 (where it was held that citizens who had purchased of the corporation lots upon the faith of an ordinance purporting to make a dedication of the timbered lands to the free and common use of the citizens were not entitled to an injunction to restrain the sale of such timbered lands, which the corporation by act of the legislature had been empowered to sell, and use the proceeds for erection of public buildings, schoolhouses, etc., for the reason that the corporation had no power to dedicate these timbered lands so as to restrain a future sale under the pow-

§ **645. Diversion of lands dedicated to public uses.**—The authorities of a municipal corporation can not lawfully appropriate to other uses land which has been dedicated by the owner as a street; nor can they divert it to uses and purposes foreign to those for which it was dedicated; nor is it within the power of the legislature to authorize such a disposal or diversion of it.[26]

ers given in the statute); Kings Co. &c. Ins. Co. v. Stevens, 101 N. Y. 411; s. c. 5 N. E. 353; Roper v. McWhorter, 77 Va. 214. In Town of Searcy v. Yarnell, 47 Ark. 269; s. c. 1 S. W. 319, where a contract of sale had been executed, the corporation was held estopped from setting up the plea of ultra vires. As to disposal of property dedicated to public uses in violation of trusts upon which it is held, or without legislative authority, see Reynolds v. Commissioners &c., 5 Ohio 204; Meriwether v. Garrett, 102 U. S. 472; Trustees &c. v. Perkins, 3 B. Mon. (Ky.) 437; Alves v. Town of Henderson, 16 B. Mon. (Ky.) 131, 168; Bowlin v. Furman, 28 Mo. 427; Kennedy v. Trustees &c., 8 Dana (Ky.) 50; Town Council &c. v. Elliott, 5 Ohio St. 113; Ransom v. Boal, 29 Iowa 68; Still v. Trustees &c., 16 Barb. (N. Y.) 107; Commissioners &c. v. McCombs, 19 Ohio St. 320; City of Philadelphia v. Philadelphia &c. R. Co., 58 Pa. St. 253; Holladay v. Frisbie, 15 Cal. 630; Shannon v. O'Boyle, 51 Ind. 565; Matthews v. City of Alexandria, 68 Mo. 115; Lord v. City of Oconto, 47 Wis. 386; s. c. 2 N. W. 785; Board &c. v. Patterson, 56 Ill. 111.

[26] Packet Co. v. Sorrels, 50 Ark. 466; s. c. 8 S. W. 683; In re John and Cherry Streets, 19 Wend. (N. Y.) 659; Warren v. Mayor &c., 22 Iowa 351; Le Clerq v. Trustees &c., 7 Ohio 217; Trustees &c. v. Mayor &c., 33 N. J. L. 13; Trustees &c. v. Perkins, 3 B. Mon. (Ky.) 437; Buckner v. Trustees &c., 1 A. K. Marsh. (Ky.) 9; Alves v. Town of Henderson, 16 B. Mon. (Ky.) 131, 168; Police Jury v. McCormack, 32 La. An. 624; Matthews v. City of Alexandria, 68 Mo. 115; Kennedy v. Trustees &c., 8 Dana (Ky.) 50; Rutherford v. Taylor, 38 Mo. 315; Price v. Thompson, 48 Mo. 361, 363; City of Alton v. Illinois Transp. Co., 12 Ill. 38; San Antonio v. Lewis, 15 Tex. 388; Mayor &c. v. United States, 10 Pet. 662; Ransom v. Boal, 29 Iowa 68; Branham v. Mayor &c., 24 Cal. 585; Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; City of Jacksonville v. Jacksonville R. Co., 67 Ill. 450; Town of Cromwell v. Connecticut &c. Quarry Co., 50 Conn. 470; West Carroll Parish v. Gaddis, 34 La. An. 928; Cummings v. City of St. Louis, 90 Mo. 259; s. c. 2 S. W. 130; Hart v. Burnett, 15 Cal. 530; City of San Francisco v. Canavan, 42 Cal. 541; Pickett v. Hastings, 47 Cal. 269; Commonwealth v. Rush, 14 Pa. St. 186; Commonwealth v. Alburger, 1 Whart. (Pa.) 469; Board &c. v. Inhabitants &c., 18 Ohio St. 221; Seebold v. Shitler, 34 Pa. St. 133; President &c. v. City of Indianapolis, 12 Ind. 620; Mayor &c. v. Stockton, 44 N. J. Eq. 179; s. c. 14 Atl. 630; New Orleans &c. R. Co. v. City of New Orleans, 26 La. An. 478; s. c. 26 La. An. 517; Franklin Co. Com'rs v. Lathrop, 9 Kan. 453; Woodruff v. Neal, 28 Conn. 165. As to power of municipal corporation to alien public places with the consent of the legislature, see Herbert v. Lavalle, 27 Ill. 448; Bell v. Ohio &c. R. Co., 25 Pa. St. 161; s. c. 1 Grant Cas. (Pa.) 105; In re Philadelphia &c. R. Co., 6 Whart. (Pa.) 25;

§ 646. Sale of real estate—Prescribed mode controls.—The cases in California which involved the sale of real estate of the city under an invalid ordinance necessitated rulings upon various points pertinent to the subject we are now considering. The legislature had restricted the governing authorities in the charter to a sale of such property by ordinance or resolution authorizing it, the only mode of city legislation, and prescribed how many votes should be required to pass such ordinance. The power of the legislature to prescribe a mode was sustained by the court, and the ordinance was held void because it was not adopted by a proper vote; in short, there was no power to sell because the necessary steps to give such power had not been taken. It was therefore held that the sales were never properly made and that no title to the purchasers passed from the city. The court held the city, inasmuch as it had through its officers received the money of these purchasers paid upon their contracts of purchase, and used the same for corporate municipal purposes, liable in actions for its recovery to return it. Field, C. J., said: "[The facts] show an appropriation of the proceeds, and the liability of the city arises from the use of the moneys or her refusal to refund them after their receipt. The city is not exempted from the common obligation to do justice which binds individuals. Such obligation rests upon all persons whether natural or artificial. If the city obtain the money of another by mistake, or without authority of law, it is her duty to refund it, from this general obligation. If she obtain other property which does not belong to her, it is her duty to restore it, or if used, to render an equivalent therefor, from the like obligation.[27] The legal liability springs from the moral duty to make restitution. And we do not appreciate the morality which denies in such cases any rights to the individual whose money or other property has been thus appropriated.

Hart v. Burnett, 15 Cal. 530; Payne v. Treadwell, 16 Cal, 220 (distinguished in Grogan v. City of San Francisco, 18 Cal. 590, 614); City and County of San Francisco v. Itsell, 80 Cal. 57; s. c. 22 Pac. 74 (where it was held that the city held its public squares in trust for the public, and the municipal authorities had no authority to dispose of them by way of compromise or otherwise); Hoadley v. San Francisco, 50 Cal. 265 (where the court said of this same square:—"It was granted to the city for public use and is held for that purpose only. It can not be conveyed to private persons, and is effectually withdrawn from commerce; and the city having no authority to convey the title, private persons are virtually precluded from acquiring it"); approved and followed in Sawyer v. City of San Francisco, 50 Cal. 370, and in Hoadley v. City of San Francisco, 70 Cal. 320; s. c. 12 Pac. 125, which was affirmed on writ of error in Hoadley v. City of San Francisco, 124 U. S. 639, 646; s. c. 8 S. Ct. 659.

[27] Argenti v. City of San Francisco, 16 Cal. 255.

The law countenances no such wretched ethics: its command always is to do justice."[28] It was held that where an authority to do any particular act on the part of the corporation could only be conferred by ordinance, a ratification of such an act could only be by ordinance. And further, that even if the city would be estopped from denying the sale and from asserting title to the property sold, it did not follow that the purchasers would be estopped from claiming a return of the money they paid. The general doctrine of estoppel in pais is not applicable to these purchasers, they not being wrong-doers. The sale of the city's property here being without authority and void, these purchasers were not required to surrender possession before they could maintain an action to recover back the purchase-money. The rule as to rescission does not apply. The contract being void, there was nothing to rescind; no rights were acquired, and there were in consequence no rights to restore.[29]

§ 647. **Appropriations for highways and school-buildings.**—Town supervisors have no authority to appropriate or expend in the construction or repair of highways any funds raised for ordinary town charges.[30] Nor have the electors of a town power to appropriate any sum for such construction or repair of highways, except when they have voted to raise the sum by taxation. The power to appropriate is limited to the sum voted to be raised. They have no control over any other fund for that purpose.[31]

[28] Pimental v. City of San Francisco, 21 Cal. 351, 361, 362.

[29] McCracken v. City of San Francisco, 16 Cal. 591; Grogan v. City of San Francisco, 18 Cal. 590; Satterlee v. City of San Francisco, 23 Cal. 314; Herzo v. City of San Francisco, 33 Cal. 134; Zottman v. City of San Francisco, 20 Cal. 96; People v. Swift, 31 Cal. 26, 28.

[30] Aldrich v. Collins, 3 S. D. 154; s. s. c. 52 N. W. 854. As the constitution, art. 10, § 2, provides that funds raised "by taxation, loan or assessment for one purpose shall not be diverted to any other," the acts of the board in this case making such appropriations were held to be illegal and void.

[31] Aldrich v. Collins, 3 S. D. 154; s. c. 52 N. W. 854, holding that a resolution adopted by the electors at their annual town meeting to keep all the funds of the town in one general fund was without authority of law and void. In Brown v. School Dist., 64 N. H. 303; s. c. 10 Atl. 119, a vote of a school district to raise money for the erection of a schoolhouse upon a lot other than the one designated by the county commissioners, upon a proper appeal from the action of the district was held to be unauthorized and void. The court said:—"If the school district were permitted to abrogate or discontinue a location made by the commissioners, which would be a refusal to procure the land designated, and to build a schoolhouse upon it, they could nullify the statutes designed to compel the purchase of the land located for a lot by the commissioners and the building upon it of

§ 648. Power to purchase realty does not authorize giving notes.—While a county in Nebraska is empowered by statute to purchase realty for a poor-farm, it is beyond the power of the governing authorities of the corporation to give promissory notes and mortgages of the land to secure their payment.[32] The United States supreme court accepted this as a correct ruling upon the statute as to the purchase of a poor-farm for a county, but held that parties who had sold such to a county for a cash payment and notes with mortgages for the deferred payments, upon the failure of the county to meet these notes were entitled to have the contract of purchase rescinded and the property reconveyed to them.[33]

a schoolhouse." See also, Holbrook v. Faulkner, 55 N. H. 311, 315, 316; Blake v. Orford, 64 N. H. 299; s. c. 10 Atl. 117, where it was held that such a tax would be abated on petition of the taxpayers of the district. In Andrews v. School Dist., 37 Minn. 96; s. c. 33 N. W. 217, it was held that where goods were received under a contract made by the trustees in a manner unauthorized and which would not bind the district, and used for the benefit of the district under such circumstances and for such length of time as to raise the presumption that it was with the common consent of the district, the law would impose on the district the obligation to pay for them. In Town of Winamac v. Huddleston, 132 Ind. 217; s. c. 31 N. E. 561, it was held that a town could not issue bonds to procure funds with which to rebuild a schoolhouse, where the bonds, if issued, would create an indebtedness in excess of two per cent. of the taxable value of the property within the town limits, to which limit of taxation it is restricted by the constitution of Indiana, art. 13, § 1. The court said:—"The debt created by a bond executed by a public corporation is not an obligation payable out of a specific fund, but is a contract to pay money generally." This case is not within the doctrine of Quill v. City of Indianapolis, 124 Ind. 292; s. c. 23 N. E. 788; Strieb v. Cox, 111 Ind. 299; s. c. 12 N. E. 481; Board &c. v. Hill, 115 Ind. 316; s. c. 16 N. E. 156. These bonds would create a debt, this case radically differing from City of Valparaiso v. Gardner, 97 Ind. 1; s. c. 49 Am. R. 416. That there was a provision or promise to levy taxes to pay these bonds was no reason why the constitutional resriction would not apply.

[32] Stewart v. Otoe Co., 2 Neb. 177. The court said:—"The statutes provide the only security that can be given. The public faith is pledged, and a tax not exceeding one per cent. may be levied upon all the taxable property of the county annually, and when collected paid to the person entitled thereto by an order upon the treasurer of the county, payable out of that special fund."

[33] Chapman v. Douglass Co., 107 U. S. 348; s. c. 2 S. Ct. 62. The court said:—"The agreement, . . . so far as it relates to the time and mode of payment, is void; but the contract for the sale itself has been executed on the part of the vendor by delivery of the deed, and his title at law has actually passed to the county. As the agreement between the parties has failed by reason of the legal disability of the county to perform its part, according to its conditions, the right of the vendor to rescind the contract and to a restitution of his title would seem to be

§ 649. **Work on public buildings, etc.**—The people of a county voted seventy-five thousand dollars to build a court-house, and a contract was entered into by a contractor to build it by the plans and specifications for that sum. Changes were made in the plans by which the cost was much increased in some respects, but no corresponding changes were made to decrease the cost in other respects. It was held in such a case that all the agreements whereby the total cost of the work was to exceed the sum of seventy-five thousand dollars were in excess of the authority of the supervisors, and therefore void, and there could be no recovery upon them; and that the case was not altered by the fact that the people afterwards voted an additional sum to complete the building which the contractor failed to finish under his contract.[34] Boards of supervisors have no power to construct bridges over navigable lakes, no such power having been conferred upon them by statute.[35]

as clear as it would be just, unless some valid reason to the contrary can be shown." (See also, Marsh v. Fulton Co., 10 Wall. 676, 684; Louisiana v. Wood, 102 U. S. 294; Miltenberger v. Cooke, 18 Wall. 421.) Further on the court said:—"The purchase itself . . . was expressly authorized. The agreement for definite times of payment and for security alone was not authorized. It was not illegal in the sense of being prohibited as an offense; the power in that form was simply withheld. The policy of the law extends no further than merely to defeat what it does not permit and imposes upon the parties no penalty. It thus falls within the rule stated in Pollock on Contracts 264." See also, as to the application of this principle, Morville v. American Tract Society, 123 Mass. 129, 137; Hitchcock v. Galveston, 96 U. S. 341, 350, which allowed a recovery for the value of the benefit conferred upon the municipal corporation, notwithstanding the contract to pay in bonds was held to be illegal and void. The court said:—"It matters not that the promise was to pay in a manner not authorized by law. If payment can not be made in bonds because their issue is ultra vires, it would be sanctioning rank injustice to hold that payment may not be made at all. Such is not the law."

[34] King v. Mahaska Co., 75 Iowa 329; s. c. 39 N. W. 636; Lancaster Co. v. Fulton, 128 Pa. St. 48; s. c. 18 Atl. 384; 24 W. N. C. (Pa.) 401 (a contract made by the commissioners of a county, to give to the county solicitor, whose salary is fixed by law, an additional compensation for services to be rendered by him lying within the sphere of his official duties as prescribed by statute, was held to be ultra vires; and that being in its effect evasive and subversive of law, and contrary to public policy, it was void, irrespective of intent, and was, therefore, incapable of being ratified after the expiration of the solicitor's term); Hunter v. Nolf, 71 Pa. St. 282; Chester Co. v. Barber, 97 Pa. St. 455.

[35] Snyder v. Foster, 77 Iowa 638; s. c. 42 N. W. 506. The court said:—"It is true that boards of supervisors have power to provide for the erection of all bridges 'which may be necessary and which the public convenience may require, within their respective counties,' but they can provide for the erection of such

§ 650. **Issuing of bonds.**—Where there is a total want of power under the law in the officers or board who issue bonds of a municipal corporation, the bonds will be void in the hands of innocent holders. There is a distinction between irregularities in the exercise of the power conferred and the total want of power to do the act, the distinction being between questions of fact and questions of law. If it is a question of fact and the board of officers are authorized by law to determine the fact, then their determination is final and conclusive. And although it may be contrary to the fact, yet if recited in the bond that the necessary and proper steps required by law to be taken had been taken, then the municipality is estopped from denying that they were taken.[36] But all persons are presumed to know the law, and if the law creates conditions precedent upon which the right to act at all depended, and these conditions were not complied with, and the law appointed no board or officer to determine that fact, then there can not be an innocent holder of such bonds.[37] Where a bond upon its face does not show authority on the part of the township to issue it, the doctrine of bona-fide holder does not apply, but the holder takes it subject to the defense of entire illegality.[38]

bridges only in public highways. They may establish highways only 'as provided by law.' But the law does not authorize the establishment of a highway until the right to use the land over which it is to pass for that purpose has been obtained. In this case the state holds the title to the bed of the lake for the use and benefit of its citizens. It has not, by express statute, authorized any obstruction of such use." See also, as to how far powers conferred may be extended by implication, Hickok v. Hine, 23 Ohio St. 523; Inhabitants &c. v. County Com'rs, 3 Met. (Mass.) 202; Commonwealth v. Coombs, 2 Mass. 489; Inhabitants &c. v. Railway Co., 4 Cush. (Mass.) 63; Attorney-General v. Stevens, 1 Saxt. Ch. (N. J.) 369; s. c. 22 Am. D. 526.

[36] Spitzer v. Village of Blanchard, 82 Mich. 234; s. c. 46 N. W. 400; Dixon Co. v. Field, 111 U. S. 83; s. c. 4 S. Ct. 315.

[37] Bernards Tp. v. Morrison, 133 U. S. 523; s. c. 10 S. Ct. 333.

[38] Bogart v. La Motte Tp., 79 Mich. 294; s. c. 44 N. W. 612. And a municipal corporation can not ratify or be estopped by an act void in its inception and wholly ultra vires: Highway Com'rs v. Van Dusan, 40 Mich. 429. In Rogers v. Burlington, 3 Wall. 654, the court held that when the power was shown in the municipal corporation to issue the bond, but there were irregularities in its execution, the corporation might be estopped to deny that the power was properly executed. In Town of Hackettstown v. Swackhamer, 37 N. J. L. 191, it was held that municipal corporations in the absence of a specific grant of power do not in general possess the capacity to borrow money; and a note given by such corporation for an unauthorized loan can not be enforced, even though the money borrowed has been expended for municipal purposes. In Portsmouth Sav. Bank v. Village of Ashley, 91 Mich. 670; s. c. 52 N. W. 74, it was held that the village was not bound

§ 651. The same subject continued—Municipal aid.—A municipal corporation can not create a debt and issue negotiable bonds representing it in order to pay for a subscription to a railway corporation under a power conferred by the legislature upon it to subscribe for stock in that corporation.[39] Seven-year bonds issued by a township board, bearing interest, in lieu of township orders which were payable on presentation, have been held void.[40] The power of township boards in Michigan to audit and allow claims and issue obligations ends with issuing orders for what they allow to be signed by the clerk and countersigned by the chairman.[41]

to pay water-works bonds, the signing of which by the president and clerk had been authorized by resolution of the village council, but which were delivered by the president without any authority conferred by resolution. - - - The public can act only through authorized agents, and it is not bound until all who are required to participate in what is to be done have performed their respective duties: Brown v. Bon Homme Co., 1 S. D. 216; s. c. 46 N. W. 173. The Michigan court also said:—"The statute of this state in reference to the issuing of the water-works bonds vests that power in the village council, and until that body has met at a legal meeting and voted to issue the bonds or authorized their issue, one of the essential requirements of the statute has not been complied with; and these bonds being issued without such direction are not binding against the village."

[39] Hill v. Memphis, 134 U. S. 198; s. c. 33 L. ed. 887; 10 S. Ct. 562; 7 R. R. & Corp. L. J. 470; 29 Am. & Eng. Corp. Cas. 135. All grants of power of this kind must be construed strictly. Under a grant like this the corporation might give written evidence of the subscriptions, but that only. The rule for municipal corporations differs from that of private corporations. Private corporations created for private purposes may contract debts in connection with their business, and issue evidences of them in such form as may best suit their convenience. But municipal corporations, being established for purposes of local government, in the absence of specific delegation of power can not engage in undertakings not directed immediately to the accomplishment of those purposes. The provisions in the general railroad law of Missouri which went into effect January 1, 1866, respecting the loan of municipal credit to a railroad company, and the act of the state of March 24, 1868, respecting the funding of the debts of municipalities, are to be construed in subordination to the provisions of the constitution of the state then in force, prohibiting the legislature authorizing any town to loan its credit to any corporation except with the assent of two-thirds of the qualified voters at a regular or special election: Hill v. Memphis, supra.

[40] Bogart v. La Motte Tp., 79 Mich. 294; s. c. 44 N. W. 612; for neither townships of this state nor their officers have any power to borrow money or to issue bonds unless that power is conferred upon them by act of the legislature.

[41] Comp. L. Mich., § 708. As to the rule of strictly construing acts granting corporate powers involving the imposing of public burdens, see 1 Dillon Munic. Corp., §§ 507–509; Starin v. Town of Genoa, 23 N. Y. 439; Police Jury v. Britton, 15

§ 652. The same subject continued—Public improvements.—While police juries may contract for improvements which they are authorized to make to be paid out of the taxes which they are authorized to levy for parochial expenses, and which are set apart for this special improvement, they can not issue any promissory note, draft or warrant in advance to cover this amount which may go into the treasury. It must be there before the warrant issues, unless by legislative authority they are authorized to issue the same in advance.[42] A town in Indiana had issued its negotiable bonds to a certain amount, the proceeds of which were to be used in the construction of a schoolhouse, and sold them in open market. When they matured there was a new issue of similar bonds and they were also sold in open market. The supreme court of the United States held the new issue to be void for want of authority, and that the municipality was not estopped from setting up that defense.[43]

Wall. 566; Gause v. City of Clarksville, 5 Dill. 165. In City of Newport v. Newport &c. Co., 84 Ky. 166, it was held that when a municipal corporation has the power, express or implied, to contract with others to furnish its inhabitants with the means of obtaining gas at their own expense, it has the power to make a contract granting to a corporation the exclusive rights to the use of its streets for that purpose for a term of years. This opinion rested upon this, among other grounds,—that the power given the municipality to provide for lighting the city included the power to grant that exclusive right.

[42] Snelling v. Joffrion, 42 La. An. 886; s. c. 8 So. 609, in which the court sustained the rights of taxpayers to maintain the action to annul the contract so far as to prevent the issuing of evidences of indebtedness against a fund not yet in the parish treasury, this being prohibited by express legislative enactment: La. acts 1877, No. 30, § 5; Breaux v. Parish of Iberville, 23 La. An. 232; Sterling v. Parish of West Feliciana, 26 La. An. 59. See also, Newgass v. City of New Orleans, 42 La. An. 163; s. c. 7 So. 565 (the court would not interfere with the discretion of a police jury so as to dictate what particular contract should or should not be made); State v. City of New Orleans, 41 La. An. 91; s. c. 5 So. 262; Conery v. New Orleans Water-Works Co., 41 La. An. 910; s. c. 7 So. 8.

[43] Merrill v. Monticello, 138 U. S. 673; s. c. 11 S. Ct. 441. The implied power of a municipal corporation to borrow money to enable it to execute the powers expressly conferred upon it by law, if it exists at all, does not authorize it to create and issue negotiable securities to be sold in the market and to be taken by a purchaser freed from equities that might be set up by the maker. To borrow money and to give a bond or obligation therefor which may circulate in the market as a negotiable security freed from any equities that may be set up by the maker of it are essentially different transactions in their nature and legal effect. See also, Marsh v. Fulton Co., 10 Wall. 676; East Oakland Tp. v. Skinner, 94 U. S. 255; Buchanan v. Litchfield, 102 U. S. 278; Dixon Co. v. Field, 111 U. S. 83; s. c. 4 S. Ct. 315; Hayes v. Holly Springs, 114 U. S. 120; s. c. 5 S. Ct.

§ 653. Contracts abrogating control of streets.—The laying out and opening streets by the common council of a city being the exercise of its legitimate functions, any contract made by the city with an individual or corporation, by which it agrees that it will not in the future open or extend a street in any particular place or part of the city, is an abrogation of its legislative powers and ultra vires.[44] A contract by a city to straighten the course of a large stream running in a zigzag direction through it has been held not to be ultra vires.[45]

785; Daviess Co. v. Dickinson, 117 U. S. 657; s. c. 6 S. Ct. 897; Gause v. City of Clarksville, 5 Dill. 165; Hopper v. Covington, 118 U. S. 148, 151; s. c. 6 S. Ct. 1025; McCracken v. City of San Francisco, 16 Cal. 591, 619; Police Jury v. Britton, 15 Wall. 566; Mayor v. Ray, 19 Wall. 468; Claiborne Co. v. Brooks, 111 U. S. 400, 406; s. c. 4 S. Ct. 489 (where it was held that the statutes of Tennessee which conferred upon counties in that state power to erect a courthouse, jail and other necessary county buildings did not authorize the issue of commercial paper as evidence of or security for a debt contracted for the construction of such a building); Young v. Clarendon Tp., 132 U. S. 340, 347; s. c. 10 S. Ct. 107; Kelley v. Milan, 127 U. S. 139; s. c. 8 S. Ct. 1101; Hill v. Memphis, 134 U. S. 198, 203; s. c. 10 S. Ct. 562.

"Matter of Opening of First Street, 66 Mich. 42; s. c. sub nom. In re City of Grand Rapids v. Grand Rapids &c. R. Co., 33 N. W. 15. See also, Gale v. Village of Kalamazoo, 23 Mich. 344; Toledo &c. R. Co. v. Detroit &c. R. Co., 62 Mich. 564; s. c. 29 N. W. 500; Milhau v. Sharp, 27 N. Y. 611; Coleman v. Second Ave. R. Co., 38 N. Y. 201; Hood v. Mayor &c., 1 Allen (Mass.) 103; Backus v. Lebanon, 11 N. H. 19; State v. Hudson &c. R. Co., 38 N. J. L. 548; Newcastle &c. R. Co. v. Peru &c. R. Co., 3 Ind. 464; Brimmer v. Boston, 102 Mass. 19; Trustees &c. v. Salmond, 11 Maine 109; West River Bridge Co. v. Dix, 6 How. 507; Dillon Munic. Corp., § 567; Davis v. Mayor, 14 N. Y. 506, 532; People's R. Co. v. Memphis R. Co., 10 Wall. 38.

"McGuire v. City of Rapid City, 6 Dak. 346; s. c. 43 N. W. 706; the court holding such power in the city to arise from its power to drain, improve, keep in repair and prevent obstructions in its streets. In Benton v. Hamilton, 110 Ind. 294; s. c. 11 N. E. 238, a contract between a town treasurer and the town for the improvement by the former of a public street was void under the revised statutes of Indiana 1881, § 2049 (Burns' R. S. Ind. 1901, § 2136), which prohibited it; and it was further held that contracts by a municipal corporation with one of its own officers, by which a burden is imposed on property-owners, are opposed to the policy of the law. In Lyddy v. Long Island City, 104 N. Y. 218; s. c. 10 N. E. 155, a contract with an attorney made with the authorities of a city for professional services was void, as the amended charter of the city (N. Y. laws 1871, ch. 461) placed the common council under an absolute disability to create any debt or liability on the part of the city for legal services; also, that, having no authority to create a liability against the city by express contract, it could not legalize such a claim by acknowledgment, ratification or otherwise. - - - Power of village trustees in relation to vacation of streets and acts declared ultra vires, in New

§ 654. General legislation—Offers of rewards.—The contracts of municipalities obtain validity only by force of the law authorizing their making. There is no authority for contracts that the law does not empower the governing boards to enter into.[46] In holding that a county court in Oregon had no power to order the offer of a reward for information leading to a conviction of bribery at a coming election, the court said: "The county courts, in the management of county affairs, have no power except that which is expressly given them by statute, or which is necessary to carry out those so given them. They have no authority to legislate. Their province is to administer the law as the legislature has directed."[47] An incorporated village has power to offer a reward for the conviction of incendiaries for offenses committed within its limits where it is authorized to provide for the preservation of public property and for the safety and general welfare of the inhabitants.[48] It has been held that under power to preserve order and protect the city from fire, and the danger from the same, the city council has no power to offer rewards for the detection of incendiaries.[49] In the absence of express charter or statutory power a municipal corporation has no power to offer and pay a reward for the apprehension and conviction of a criminal.[50] In the absence of a statute a town has not power to grant bounties.[51]

York &c. R. Co. v. Village of New Rochelle, 60 N. Y. S. 904; s. c. 29 Misc. (N. Y.) 195.

[46] Therefore a contract let by a board of commissioners of a county, for the care of the "poor," at a certain price per capita, and for the care of the "sick and infirm" at another price per capita, was held to be void in Lebcher v. Board &c., 9 Mont. 315; s. c. 23 Pac. 713, as the law only authorized a contract for the care of such persons as were poor and therewith sick and infirm. See also, Parr v. President &c., 72 N. Y. 463; Head v. Providence Ins. Co., 2 Cranch 127; Bonestell v. Mayor, 22 N. Y. 162; Foster v. Coleman, 10 Cal. 278; Zottman v. City of San Francisco, 20 Cal. 96; s. c. 81 Am. D. 96; Argenti v. City of San Francisco, 16 Cal. 255; City of Alton v. Madison Co., 21 Ill. 115; Dillon Munic. Corp., § 381; Thomas v. City of Richmond, 12 Wall. 349; Clark v. City of Des Moines, 19 Iowa 199; Loker v. Inhabitants &c., 13 Pick. (Mass.) 343; City of Philadelphia v. Flanigan, 47 Pa. St. 21; Johnson v. Santa Clara Co., 28 Cal. 545.

[47] Mountain v. Multnomah Co., 16 Or. 279; s. c. 18 Pac. 464. They have no powers except those granted and defined by law, and like other agents must pursue their authority and act within the scope of their power. See also, Wolcott v. Lawrence Co., 26 Mo. 272; Book v. Earl, 87 Mo. 246; Sturgeon v. Hampton, 88 Mo. 203; State v. Brossfield, 67 Mo. 331; Webb v. La Fayette Co., 67 Mo. 353; Ranney v. Bader, 67 Mo. 476; State v. Walker, 85 Mo. 41.

[48] People v. Village of Holly, 119 Mich. 637; s. c. 78 N. W. 665.

[49] Crofut v. City of Danbury, 65 Conn. 294; s. c. 32 Atl. 365.

[50] City of Winchester v. Redmond, 93 Va. 711; s. c. 25 S. E. 1001.

[51] O'Connor v. Town of Waterbury, 69 Conn. 206; s. c. 37 Atl. 499.

§ **655. Contracts for water supply.**—An act, the material parts of which are quoted in the note,[52] for the annexation of a town to a city, was held to give to the city a power to purchase the property and franchises of the water-works company, but by the terms of the act that right expired with the expiration of the two years.[53] Any contract by a city council with a private corporation, impairing the exercise of its power and duty to keep the streets in repair, safe and convenient for public use, is void as against public policy.[54] Upon a contention that a contract by a city with a water company, in extending through a period of twenty-one years and depriving subsequent city councils of legislative control over the matter embraced in it, was ultra vires, it was held that the objection did not require that the contract should be held void, but only voidable so far as it was executory.[54a]

§ **656. The same subject continued.**—Authority to make a permanent and exclusive contract with a water company to build water-works and supply a city with water can not be implied from the

[52] Laws of New York 1886, ch. 335, § 5, read: "The mayor, comptroller and auditor of the city . . . are hereby authorized . . . to purchase the reservoir, . . . and all other property, of [a water-works company] . . . when and at such price as may be agreed upon, . . . and in case said parties shall be unable to agree upon a price for the purchase, . . . then in that case the power to acquire said property and franchises by the right of eminent domain is hereby expressly delegated to said city, . . . and the said officers in the name of and for said city within two years thereafter may proceed to acquire . . ."

[53] Zeigler v. Chapin, 126 N. Y. 342; s. c. 27 N. E. 471; affirming s. c. 59 Hun (N. Y.) 214; 13 N. Y. S. 783, in which case the court held the action of a taxpayer to annul a contract which had been entered into by the city authorities for the purchase of this property, on the ground that the contract having been made after the two years had expired was illegal and void, there being no power in the city authorities to make it, was maintainable, and that the injunction restraining the officials from carrying out the contract pending the litigation was properly granted.

[54] City Council &c. v. Capital City Water Co., 92 Ala. 361; s. c. 9 So. 339. The court said:—"If conceded that the city council has authority to contract for a supply of water for fire and sanitary purposes, yet the city council has no power, in the absence of legislative authority, to make contracts or pass ordinances relinquishing or abandoning the legislative or governmental powers or divesting the corporation of its legislative discretion, or disabling it to perform its public duties: 1 Dillon Munic. Corp., § 97."

[54a] Carlyle Water &c. Co. v. City of Carlyle, 31 Ill. App. 325; City of East St. Louis v. East St. Louis Gas &c. Co., 98 Ill. 415; Decatur Gas &c. Co. v. City of Decatur, 24 Ill. App. 544.

general power conferred by its charter to contract for the needs of a municipality.[55]

§ 657. **Contracts for lighting streets.**—Cities and towns in Massachusetts have been held to have no authority under the statutes to erect and maintain works for the manufacture and distribution of electric light for lighting the public streets or for this and the additional purpose of furnishing light to their inhabitants.[56] A city has

[55] Greenville Water-Works Co. v. City of Greenville (Miss.), 7 So. 409. In City of Brenham v. Brenham Water Co., 67 Tex. 542; s. c. 4 S. W. 143, it was held that the city had no power to grant to this water company an exclusive privilege of supplying it with water for twenty-five years, such power not being expressly granted to it, and for the further reason that the power of a city government to make such a contract as would disable it from controlling in future, as it might deem best, municipal affairs to which it refers, can not be implied from the express delegation of power to contract regarding the particular subject-matter. The ruling was based upon the general principle that powers are conferred on municipal corporations for public purposes, and they can neither be delegated nor bartered away. Such corporations have no power either to cede away or embarrass their legislative or governmental powers, either through the agency of by-laws or contracts with others, so as to disable them from the performance of their public duties. Applying these principles, the contract here would have the effect not only to embarrass the city government in the exercise of the power conferred on it but to withdraw from it the right to provide water in any other authorized way for public purposes and for the inhabitants of the city, which was the sole purpose for which the power to erect, maintain and regulate water-works was given to it. This would result from the exclusive right which, from the terms of the ordinance, it intended to confer. In Waterbury v. City of Laredo, 68 Tex. 565; s. c. 5 S. W. 81, it was held that a contract between the city and an attorney, which gave to him annually for twenty years one-third of the rents of the ferry privileges and ferries or of any bridge or bridges built across the Rio Grande river at that point, the contract being declared to be irrevocable, and which mutually bound the contracting parties to do no act and to enter into no engagement or contract that would interfere with its terms, in connection with certain suits he had conducted pertinent to this ferry, for which he had been reasonably compensated, was in contravention of public policy and not enforceable. It would, if enforced, place it beyond the power of the city to establish a free ferry or to charge such tolls only as would defray the expenses of operating the franchise if it so desired. In City of Cleburne v. Brown, 73 Tex. 443; s. c. 11 S. W. 404, it was held that a contract between the city and a water and ice company, which, if carried out, would have amounted to a loan by the city of its credit to a private corporation, was ultra vires. It had not the power to do it under the constitution of Texas, art. 11, § 3.

[56] Spaulding v. Inhabitants &c., 153 Mass. 129; s. c. 26 N. E. 421; 10 L. R. A. 397; 33 Am. & Eng. Corp. Cas. 638. Such a power can not be

no power to loan the moneys arising from a sale of bonds issued to construct water-works.[57] The treasurer being by law the proper custodian of such moneys, his bondsmen, in such a case, could maintain a suit to restrain his carrying out the order of the city council, as it would be a misappropriation of the fund.[58]

§ 658. **Grant of exclusive privileges.**—The powers of municipal corporations are limited to the express terms of the grant and will not be extended by inference. A municipal corporation can confer exclusive privileges for the prosecution of business only under an express grant of power from the legislature. Monopolies being prejudicial to the public welfare, the courts will not infer grants thereof, but will refuse to presume the existence of legislative intention in conflict with public policy.[59]

implied as an incident to power expressly granted them to erect and maintain street lamps—at least where it has been the custom of the legislature to specifically define from time to time the purposes for which towns may raise money by taxation of their inhabitants. See also, as to construing strictly all such statutes, Minot v. Inhabitants &c., 112 Mass. 1; Coolidge v. Inhabitants &c., 114 Mass. 592; Connolly v. Inhabitants &c., 151 Mass. 437; s. c. 24 N. E. 404; Anthony v. Inhabitants &c., 1 Met. (Mass.) 284. The legislature of Massachusetts has, since this decision, enacted "an act to enable cities and towns to manufacture and distribute gas and electricity:" Mass. St. 1891, ch. 370, approved June 4, 1891.

[57] City of Bonham v. Taylor, 81 Tex. 59; s. c. 16 S. W. 555; 33 Am. & Eng. Corp. Cas. 647. The court said:—"Municipal corporations existing under the general law have power to raise funds for special purposes, enumerated in the statute, and to use such funds for the purposes for which they were raised, but we know of no power conferred on them to become money-lenders except of a sinking-fund raised to meet the payment of a debt." It was contended that the revised statutes of Texas, art. 370, which declares that "the city council shall have the management and control of the finances and other property, real, personal and mixed, belonging to the corporation," conferred on the city the power to lend the special fund raised for constructing the water-works. This contention was overruled, the court holding that the statute meant a control in accordance with law and not in violation of law, and as to art. 420, which gave to the city power to appropriate money raised to enumerated purposes, this was not one of them. Nor would art. 424, which relates to the investment of a sinking fund, apply. The money in question was not the sinking fund, which the city would have power to lend, for the entire fund was money borrowed, and not money raised by taxation for a sinking fund.

[58] City of Bonham v. Taylor, 81 Tex. 59; s. c. 16 S. W. 555; 33 Am. & Eng. Corp. Cas. 647.

[59] Logan v. Pyne, 43 Iowa 524; s. c. 22 Am. R. 261. In City of Brenham v. Brenham Water Co., 67 Tex. 542; s. c. 4 S. W. 143, the court consid-

§ 659. **Curative legislation.**—The United States supreme court have held and adhered to it that where municipal corporations have issued evidences of indebtedness, which at the time of issue were unauthorized, it is in the power of the legislature to validate their issue by curative legislation.[60]

ered a grant to a water company of the right and privilege, for the term of twenty-five years, of furnishing the city with water, and thus summed up their conclusion:—"We do not wish to be understood to hold that a municipal corporation has no power in any event to contract for such things as are consumed in their daily use, for a period longer than the official term of the officers who make the contract; but we do intend to be understood to hold that such corporations have no power to make contracts continuous in character in reference to such things or any others, by which they will be, in effect, precluded from exercising, from time to time, any power, legislative in character, conferred upon them by law." In Gale v. Village of Kalamazoo, 23 Mich. 344; s. c. 9 Am. R. 80, in which a contract to build and control a market-house for the period of ten years was held to be void because it created a monopoly, Judge Cooley said:—"It is impossible to predicate reasonableness of any contract by which the governing authority abdicates any of its legislative powers, and precludes itself from meeting in the proper way the emergencies that may arise. Those powers are conferred in order to be exercised again and again, as may be found needful or politic; and those who hold them in trust to-day are vested with no discretion to circumscribe their limits or diminish their efficiency, but must transmit them unimpaired to their successors. This is one of the fundamental maxims of government, and it is impossible that free government with restrictions for the protection of individual or municipal rights could long exist without its recognition." In Davenport v. Kleinschmidt, 6 Mont. 502; s. c. 13 Pac. 249, it was held that a city council has no authority to grant to any person a monopoly even where no express prohibition is found in the charter or other acts of the legislature. In Minturn v. Larue, 23 How. 435, Justice Nelson gives this rule of construction of grants by the legislature to corporations:—"That only such powers and rights can be exercised under them as are clearly comprehended within the words of the act, or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favor of the public." In Richmond Co. Gas-Light Co. v. Town of Middletown, 59 N. Y. 228, the New York court of appeals held that there was no power conferred upon the town auditors to contract with a gas company to light the streets of the town for five years. In City of Chicago v. Rumpff, 45 Ill. 90, a right to do all slaughtering of animals in Chicago for a specified period was held to be void, because creating a monopoly.

[60] Bolles v. Brimfield, 120 U. S. 759; s. c. 7 S. Ct. 736; Grenada Co. Supervisors v. Brogden, 112 U. S. 261, 262; s. c. 5 S. Ct. 125 (the court saying in this case:—"Since what was done in this case by the constitutional majority of qualified electors and by the board of supervisors of the county would have been legal and binding upon the county had it

§ 660. **Ratification.**—Corporate ratification, without authority from the legislature, can not make a municipal bond valid which was void when issued for want of legislative power to make it.[61] An

been done under legislative authority previously conferred, it is not perceived why subsequent legislative ratification is not, in the absence of constitutional restrictions upon such legislation, equivalent to original authority"); Thompson v. Perrine, 103 U. S. 806, 815; Ritchie v. Franklin Co., 22 Wall. 67; Thomson v. Lee Co., 3 Wall. 327, 330; City v. Lamson, 9 Wall. 477, 485; Campbell v. City of Kenosha, 5 Wall. 194; Otoe Co. v. Baldwin, 111 U. S. 1, 15; s. c. 4 S. Ct. 265; St. Joseph Tp. v. Rogers, 16 Wall. 644, 663; Anderson v. Santa Anna Tp., 116 U. S. 356; s. c. 6 S. Ct. 413; United States Mort. Co. v. Gross, 93 Ill. 483, 494, where the court said:—"Unless there be a constitutional inhibition, a legislature has power, when it interferes with no vested right, to enact retrospective statutes to validate invalid contracts or to ratify and confirm any act it might lawfully have authorized in the first instance." In Katzenberger v. Aberdeen, 121 U. S. 172; s. c. 7 S. Ct. 947, it was held that when, by reason of a change in the constitution of a state, its legislature had no constitutional authority to authorize a municipal corporation to issue negotiable bonds, it could not validate an issue of bonds by such a corporation made before the change in the constitution, and when the legislature had such power. The court was controlled by Sykes v. Mayor &c., 55 Miss. 115, where Chief Justice Simrall said about this attempted curative act:—"The act of 1872 is not relied on to waive mere irregularities in the execution of the power, but as conferring power by retrospective operation. If the bonds are obligatory on the city of Columbus, they became so for the first time by virtue of this statute. The legislature of 1872 could not, by relation, put itself back to 1869 and exercise power not denied or restricted by the constitution of 1832. The measure of its power was the constitution of December, 1869, and it could not ratify an act previously done if, at the date it professed to do so, it could not confer power in the first instance. It could authorize a municipal loan conditionally. In order to ratify and legalize a loan previously made, it was bound by the constitutional limitation of its power." This doctrine was assented to in Grenada Co. Supervisors v. Brogden, 112 U. S. 261; s. c. 5 S. Ct. 125.

[61] Lewis v. City of Shreveport, 108 U. S. 282; s. c. 2 S. Ct. 634 (which held bonds of the city issued to grant pecuniary aid to a railroad without legislative authority void as beyond the power of the city to issue, and, as they bore evidence on their face of the purpose for which they were issued, void in the hands of bona-fide holders. The holder of the bonds insisted that as the city had employed agents to sell these bonds, and its law officer had given an opinion in favor of their validity, and as they had been recognized in official statements as binding obligations, and as taxes had been levied to pay principal or interest, this amounted to a ratification. The court held that it mattered not that such things had been done); Ottawa v. Cary, 108 U. S. 110; s. c. 2 S. Ct. 361. See also, as to the inability of subsequent acts of a corporation to make an ultra-vires contract effective, Highway Com'rs &c. v. Van Dusen, 40 Mich. 429; Board &c. v.

act performed by a public corporation in violation of the terms of a statute can not be validated by a subsequent ratification by the corporation.[62] An act of a municipal corporation, void for want of authority to do it, can not be validated by an estoppel incurred by the corporation; otherwise all limitations on the power of such corporation imposed by the legislature for the public good might be evaded at the mere volition of the corporation.[63] A municipal corporation has no vested right of property in a defense of ultra vires to a contract it has entered into, and hence a retroactive statute conferring upon a corporation power it lacked in making the contract, and thus legalizing the contract, does not deprive the corporation of its property without due process of law.[64] There is a marked distinction between the incidental powers that are implied in favor of the acts of a business corporation and those of a municipal corporation. The inability of a business corporation to avoid its obligations upon the plea of ultra vires when it has received and retained the consideration for its obligation has no application to a municipal corporation.[65]

§ **661. Estoppel.**—In general, a municipal corporation is not estopped from denying the validity of a contract with its officers, when

Arrighi, 54 Miss. 668; Nash v. City of St. Paul, 11 Minn. 174; Hague v. City of Philadelphia, 48 Pa. St. 527; Brady v. Mayor, 20 N. Y. 312; City of Bryan v. Page, 51 Tex. 532; Peterson v. Mayor, 17 N. Y. 449; Cowen v. Village of West Troy, 43 Barb. (N. Y.) 48; Brown v. Mayor, 63 N. Y. 239; Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; McDonald v. Mayor, 68 N. Y. 23; Smith v. City of Newburgh, 77 N. Y. 130; Green v. City of Cape May, 41 N. J. L. 45; Taymouth Tp. v. Koehler, 35 Mich. 22; Marsh v. Fulton Co., 10 Wall. 676; Horton v. Town of Thompson, 71 N. Y. 513; Scott v. City of Shreveport, 20 Fed. 714; San Diego Water Co. v. City of San Diego, 59 Cal. 517; Bank v. Town of Statesville, 84 N. C. 169; City of Laredo v. Macdonell, 52 Tex. 511. As to effect of use of a schoolhouse which has been constructed at an expense beyond the authority reposed in the building committee by the vote of the district, or similar cases as a ratification, see Wilson v. School Dist., 32 N. H. 118; Kingman v. Inhabitants &c., 2 Cush. (Mass.) 426; Davis v. School Dist., 24 Maine 349; Lane v. Inhabitants &c., 10 Met. (Mass.) 462; Chaplin v. Hill, 24 Vt. 528; Fisher v. Inhabitants &c., 4 Cush. (Mass.) 494; Taft v. Inhabitants &c., 14 Mass. 282; Keyser v. School Dist., 35 N. H. 477; Pratt v. Town of Swanton, 15 Vt. 147.

[62] Platter v. Board &c., 103 Ind. 360; s. c. 2 N. E. 544; 1 West. Rep. 235.

[63] Hoey v. Gilroy, 37 N. Y. St. 754; s. c. 14 N. Y. S. 159; Peterson v. Mayor, 17 N. Y. 449, 454 (holding that no sort of a ratification can make good an act without corporate authority); New York &c. R. Co. v. Van Horn, 57 N. Y. 473 (holding that a statute can not be evaded by estoppel); Northern Bank &c. v. Porter Tp. Trustees, 110 U. S. 608, 619; s. c. 4 S. Ct. 254.

[64] Steele County v. Erskine, 98 Fed. 215.

[65] Von Schmidt v. Widber, 105 Cal. 151, 157; s. c. 38 Pac. 682.

there has been no authority for making such a contract. The doctrine of ultra vires is applied with greater strictness to municipal bodies than to private corporations.[66] The supreme court of Minnesota, with reference to this doctrine, said: "A different rule of law would, in effect, vastly enlarge the power of public agents to bind a municipality by contracts, not only unauthorized but prohibited by the law. It would tend to nullify the limitations and restrictions imposed with respect to the powers of such agents; and to a dangerous extent expose the public to the very evils and abuses which such limitations are designed to prevent."[67]

[66] Newbery v. Fox, 37 Minn. 141; s. c. 33 N. W. 333, which held a contract for making certain street-improvements made by the municipal officers in the first instance without having called upon the adjacent proprietor to make them, and a default upon his part, which the charter required, to have been unauthorized; also that the contracting party could not recover after he performed the contract, he not having been misled as to any fact. He was legally chargeable with notice of the restricted power of the municipal authorities under the charter. See also, as to being chargeable with notice, McDonald v. Mayor, 68 N. Y. 23; Schumm v. Seymour, 24 N. J. Eq. 143. As to applying the doctrine of ultra vires, see Mayor v. Ray, 19 Wall. 468; Brady v. Mayor &c., 20 N. Y. 312; Hague v. City of Philadelphia, 48 Pa. St. 527; 1 Dillon Munic. Corp., § 457; Nash v. City of St. Paul, 8 Minn. 172; Concord v. Robinson, 121 U. S. 165, 170; s. c. 7 S. Ct. 937; Crow v. Oxford, 119 U. S. 215; s. c. 7 S. Ct. 180; Lyddy v. Long Island City, 104 N. Y. 218; s. c. 10 N. E. 155; Donovan v. Mayor &c., 33 N. Y. 291, 293.

[67] Nash v. City of St. Paul, 8 Minn. 172. In State v. Atlantic City, 49 N. J. L. 558; s. c. 9 Atl. 759, where the city had entered into a contract with a water-works company for a supply of water, and after some delay an action was brought by the company to enforce its contract, it was held that neither the city nor a taxpayer was estopped from contesting the authority of the city to enter into such contract, and that the writ of certiorari was properly allowed, it having been applied for within a reasonable time after it had become apparent that by the proceedings a burden might be imposed on the taxpayers. See also, State v. Mayor &c., 30 N. J. L. 303; State v. City of Hudson, 29 N. J. L. 475; State v. Mayor &c., 29 N. J. L. 115; State v. Water Com'rs, 30 N. J. L. 247; State v. Mayor &c., 36 N. J. L. 159; State v. Inhabitants &c., 36 N. J. L. 499; State v. City of Perth Amboy, 38 N. J. L. 425; Haines v. Campion, 18 N. J. L. 49; State v. Blake, 35 N. J. L. 208; State v. Logan, 43 N. J. L. 421. When, however, a municipal corporation had power to borrow money if certain facts existed, and the legislature had manifested an intention to invest certain officials or agents with authority to determine the existence of such facts, and they have solemnly asserted their existence, the corporation has been held to be estopped from contesting its obligations when in the hands of those who loaned thereon in good faith and without knowledge of the lack of power on the ground that the facts did not exist: Mutual &c. Ins. Co. v. City of Elizabeth, 42 N. J. L. 235.

§ 662. Purchasers of bonds are bound to take notice.—The power of a municipal corporation to issue coupon bonds is derived from the legislative authority of the state, and the laws conferring such power form a part of the bonds themselves. Accordingly, every person dealing with such corporation must, at his peril, take notice of the existence and terms of the law by which it is claimed the power to issue such bonds is conferred.[68] Parties dealing with a municipal corporation are bound to know the extent of the powers lawfully confided to the officers with whom they are dealing in behalf of such corporation and they must guide their conduct accordingly.[69]

§ 663. Corporations may contest ultra-vires contracts.—Where contracts are not authorized by the charter or by other legislative act, and are clearly without the scope of the power of the corporation, and therefore void, in actions thereon the corporation may interpose the plea of ultra vires, setting up as a defense its own want of power to enter into the contract.[70] The acts of officers can not bind the local

[68] National Bank &c. v. City of St. Joseph, 31 Fed. 216. In this case it was a condition of these bonds that interest should cease upon a tender of the principal by the governing authorities of the city at any time. And the court held that it was beyond the power of the mayor and councilmen to curtail or impair the effect of this condition by issuing bonds of a different tenor. See also, Anthony v. Jasper Co., 101 U. S. 693, 697; Ogden v. Daviess Co., 102 U. S. 634; Northern Bank v. Porter Tp. Trustees, 110 U. S. 608, 618; s. c. 4 S. Ct. 254. In Duke v. Brown, 96 N. C. 127; s. c. 1 S. E. 873, it was held that where there is an inherent constitutional defect in the statute authorizing the issue of municipal bonds, a purchaser of the bonds takes them with notice of their illegal origin, for purchasers must inquire into the authority by which the bonds are issued, and are held to notice of any defect therein. See also, as to the duty of persons to take notice of the scope of power of officers in contracting for municipalities, Mayor &c. v. Reynolds, 20 Md. 1; State v. Kirkley, 29 Md. 85; Horn v. Mayor &c., 30 Md. 218; Mayor &c. v. Musgrave, 48 Md. 272; City of Leavenworth v. Rankin, 2 Kan. 357; City of Wyandotte v. Zeitz, 21 Kan. 649; City of Bridgeport v. Housatonic R. Co., 15 Conn. 475, 493; Haynes v. Covington, 21 Miss. 408; Taft v. Town of Pittsford, 28 Vt. 286; City Council &c. v. Montgomery &c. R. Co., 31 Ala. 76; Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; Dill v. Inhabitants &c., 7 Met. (Mass.) 438; Branham v. Mayor &c., 24 Cal. 585, 602; McCoy v. Braint, 53 Cal. 247; Wallace v. Mayor &c., 29 Cal. 180; State v. Mayor, 29 Md. 85, 111; State v. Haskell, 20 Iowa 276; People v. Treasurer &c., 39 Mich. 554; Neely v. Yorkville, 10 S. C. 141; Craycraft v. Selvage, 10 Bush (Ky.) 696; Treadway v. Schnauber, 1 Dak. 236; s. c. 46 N. W. 464; Laycock v. City of Baton Rouge, 35 La. An. 475; Keating v. City of Kansas, 84 Mo. 415.

[69] Stone v. Bank of Commerce, 174 U. S. 412; s. c. 19 S. Ct. 747; Murphy v. City of Louisville, 72 Ky. 189. To the same effect is Village of Marysville v. Schoonover, 78 Ill. App. 189.

[70] 1 Dillon Munic. Corp., § 457;

public by estoppel where the officers performing these acts can not bind them by a direct contract.[71] A municipal corporation incurs no liability for work done under a void contract, and where there is no guaranty on its part that the forms of law have been complied with, and its officers, without authority, attempt to contract, those dealing with it must see to it that its agents have power to act.[72]

§ **664. Liability upon ultra-vires contracts.**—Where a contract is void because of the express declaration of a statute, or because prohibited in terms, the retention by a municipality of the fruits of such a contract will not subject it to liability, either under the contract or upon a quantum meruit.[73] No estoppel can ordinarily arise from the

Cheeney v. Inhabitants &c., 60 Mo. 53; Burrill v. City of Boston, 2 Cliff. 590; Martin v. Mayor &c., 1 Hill (N. Y.) 545; Overseers &c. v. Overseers &c., 18 Johns. (N. Y.) 382; Seibrecht v. City of New Orleans, 12 La. An. 496; Loker v. Inhabitants &c., 13 Pick. (Mass.) 343, 348; City of Philadelphia v. Flanigen, 47 Pa. St. 21; Cuyler v. Trustees &c., 12 Wend. (N. Y.) 165; Mayor &c. v. Cunliff, 2 N. Y. 165; Halstead v. Mayor &c., 3 N. Y. 430; Boom v. City of Utica, 2 Barb. (N. Y.) 104; Cornell v. Town of Guilford, 1 Denio (N. Y.) 510; Boyland v. Mayor &c., 1 Sandf. (N. Y.) 27; Vincent v. Inhabitants &c., 12 Cush. (Mass.) 103, 105; Stetson v. Kempton, 13 Mass. 272; Parsons v. Inhabitants &c., 11 Pick. (Mass.) 396; Hood v. Mayor &c., 1 Allen (Mass.) 103; Spalding v. City of Lowell, 23 Pick. (Mass.) 71; Mitchell v. City of Rockland, 45 Maine 496; Board &c. v. Cox, 6 Ind. 403; Inhabitants &c. v. Weir, 9 Ind. 224; Appleby v. Mayor &c., 15 How. Pr. (N. Y.) 428; Brady v. Mayor &c., 20 N. Y. 312; Estep v. Keokuk Co., 18 Iowa 199; Maupin v. Franklin Co., 67 Mo. 327; Lincoln v. Inhabitants &c., 75 Maine 141. If the city accept the benefit under a contract for street lighting it will not be heard to plead ultra vires: City of Kansas City v. Wyandotte Gas Co., 9 Kan. App. 325; s. c. 61 Pac. 317.

[71] Platter v. Board &c., 103 Ind. 360; s. c. 2 N. E. 544; 1 West. Rep. 235. A public corporation, such as a county or a city, is composed of the inhabitants of a locality, and the officers are not agents in the strict sense of the term, but are persons acting in an official capacity. See also, Baumgartner v. Hasty, 100 Ind. 575; s. c. 50 Am. R. 830; Strosser v. City of Fort Wayne, 100 Ind. 443; City of Valparaiso v. Gardner, 97 Ind. 1; s. c. 49 Am. R. 416.

[72] Daly v. City of San Francisco, 72 Cal. 154; s. c. 13 Pac. 321. The supreme court of the United States have thus stated the rule:—"Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity:" Hawkins v. United States, 96 U. S. 689; s. c. 24 L. ed. 607; Whiteside v. United States, 93 U. S. 247; s. c. 23 L. ed. 882. See also, Union School Tp. v. First Nat'l Bank, 102 Ind. 464; s. c. 2 N. E. 194; 1 West. Rep. 107; Reeve School Tp. v. Dodson, 98 Ind. 497; Axt v. Johnson School Tp., 90 Ind. 101; Pine Civil Tp. v. Huber Mfg. Co., 83 Ind. 121; Cummins v. City of Seymour, 79 Ind. 491; Driftwood &c. Co. v. Board &c., 72 Ind. 226; Murphy v. City of Louisville, 9 Bush (Ky.) 189.

[73] Goose River Bank v. Willow Lake School Tp., 1 N. D. 26; s. c. 44 N. W. 1002; Dickinson v. City of Poughkeepsie, 75 N. Y. 65; McBrian

act of a municipal corporation or officer done in violation of or without authority of law. Every person is presumed to know the nature and extent of the powers of municipal officers and therefore can not be deemed to have been deceived or misled by acts done without legal authority.[74]

§ **665. The same subject continued.**—In a case where the United States supreme court held that under the charter power of a city it was vested with power to cause sidewalks to be erected, and could delegate its power to the mayor and chairman of the committee on streets and alleys, to make, in its behalf and pursuant to its directions, a contract for doing the work, there was an objection that it had

v. City of Grand Rapids, 56 Mich. 95; s. c. 22 N. W. 206; National Tube-Works Co. v. City of Chamberlain, 5 Dak. 54; s. c. 37 N. W. 761. Ejectment will not lie against a city on a sale by it of a street, the sale being ultra vires, even where the consideration is retained by it: Beebe v. Little Rock, 68 Ark. 39; s. c. 56 S. W. 791.

[74] Seeger v. Mueller, 133 Ill. 86; s. c. 24 N. E. 513, where the rule was applied in a case in which purchasers of school lands claimed an easement of a right of way over roads laid out by school trustees, which laying out of roads was held to be ultra vires and void. In King v. Mahaska Co., 75 Iowa 329; s. c. 39 N. W. 636, it was held that, where the work done under additional and void contracts in the erection of a court-house had been paid for in the periodical estimates of an architect, and afterwards the contractor brought an action against the county for a large sum of money, involving all the transactions between the parties, based on the several contracts, the county was not concluded, by such payments, from insisting that the additional contracts were illegal and that all the money paid should be regarded as paid on the amount named in the original contract; distinguishing Long v. Boone Co., 36 Iowa 60. In Trustees &c. v. Hohn, 82 Ky. 1, an action to recover for work done on streets under a contract in which the contractor bound himself not to look to the city for payment, but to the property-owners whose lots abutted upon the street, it was held that the corporation could not be held liable upon implied promises by reason of benefits received. The court said:—"This refusal to hold corporations liable is done for the protection of the inhabitants of the corporation and because the only power the corporation has is from the law creating it, and instead of recognizing a more liberal rule the courts are inclined to hold corporations and their agents within the letter of their grant." But in Scofield v. City of Council Bluffs, 68 Iowa 695; s. c. 28 N. W. 20, it was held that where a city, pursuant to a contract, in payment for work in grading streets issued certificates of assessment upon the owners of abutting lots, it impliedly agreed that they were valid, and upon it being shown that they were not valid, because the city had no power to assess the cost of such grading upon the abutting lot-owners, the contract could not be set aside, and the city was held liable for the contract price of the work, and not only for the reasonable value thereof; following Bucroft v. City of Council Bluffs, 63 Iowa 646; s. c. 19 N. W. 807.

not the power to pay for the work done under this contract in bonds and that there should be no recovery against the city for that reason. The court, as the issue of bonds was not prohibited by any statute, said: "At most the issue was unauthorized. At most there was a defect of power. The promise to give bonds to the plaintiffs in payment of what they undertook to do was therefore, at farthest, only ultra vires; and in such a case, though the specific performance of an engagement to do a thing transgressive of its corporate power may not be enforced, the corporation can be held liable on its contract. Having received benefits at the expense of the other contracting party, it can not object that it was not empowered to perform what it promised in return, in the matter in which it promised to perform."[75]

§ 666. Ultra vires, when not a defense to actions by the corporation.—One who has made a contract with a city which is ultra vires on its part,—as, for instance, for the working of the city's convicts sentenced to the workhouse,—and reaped the benefits of such contract, can not defend in an action for their work rendered for him under the contract on the ground that the contract was against public policy or that it was not within the power of the city to enter into it.[76]

[75] Hitchcock v. Galveston, 96 U. S. 341. The court referred with approval to State Board &c. v. Citizens' St. R. Co., 47 Ind. 407, holding that "although there may be a defect of power in a corporation to make a contract, yet if a contract made by it is not in violation of its charter, or of any statute prohibiting it, and the corporation has by its promise induced a party relying on the promise and in execution of the contract to expend money and perform his part thereof, the corporation is liable on the contract." See also, substantially to the same effect, Allegheny City v. McClurkin, 14 Pa. St. 81; and more or less in point, Maher v. Chicago, 38 Ill. 266; Oneida Bank v. Ontario Bank, 21 N. Y. 490; Argenti v. City of San Francisco, 16 Cal. 255; Silver Lake Bank v. North, 4 Johns. Ch. (N. Y.) 370. The court, in Hitchcock v. Galveston, supra, held that the contract remained in force so far as it was in other respects lawful, and that the action for damages for breach of the same was maintainable. City of East St. Louis v. East St. Louis Gas &c. Co., 98 Ill. 415; Daniels v. Tearney, 102 U. S. 415; 2 Parsons Contracts 790; Field Corp., § 273, par. 8; Bridge Co. v. City of Frankfort, 18 B. Mon. (Ky.) 41; San Francisco Gas Co. v. City of San Francisco, 9 Cal. 453.

[76] City of St. Louis v. Davidson, 102 Mo. 149; s. c. 14 S. W. 825. The city could successfully interpose the plea of ultra vires if sued upon such a contract, but the other party can not plead its disability. The charter of this city, while not permitting such a contract, does not prohibit it; therefore the contract though ultra vires was not unlawful. This distinction is sanctioned by the authorities: 2 Dillon Munic. Corp. (4th ed.), § 936; McDonald v. Mayor, 68 N. Y. 23; Bigelow Estoppel (5th ed.) 465, 685; Oregonian R. Co. v. Oregon &c. R. Co., 10 Saw. 464. See also,

Where a municipal corporation has made a contract with an individual and it has been executed, and nothing remains to be done except for him to pay the last instalment of the price agreed upon for the privilege accorded him, and he has reaped all the benefits he had proposed to himself in making the contract, the doctrine of ultra vires does not apply.[77] Although a city has no power to loan its funds and take a mortgage as security, yet when its officers have done so a purchaser of the property mortgaged with notice of the lien will not be permitted to urge as a defense to the foreclosure the ultra-vires act of the city.[78]

§ **667. Taxpayers' resistance.**—The courts generally now recognize the rights of property-holders or taxable inhabitants to resort to judicial authority to restrain municipal corporations and their officers from transcending their lawful powers or violating their legal duties in any unauthorized mode which will increase the burden of taxation, or otherwise injuriously affect taxpayers and their property; such as an unwarranted appropriation and squandering of corporate funds or unjustifiable disposition of corporate property; an illegal levy and collection of taxes not due or exigible, etc.[79]

Mayor v. Harrison, 30 N. J. L. 73, where a collector of assessments for street-improvements and his sureties sought to defend an action on his bond upon the ground that the act of the council of the municipality in creating the office and his appointment to it were ultra vires and void; it was held that there was no power in the common council to create the office, but that the appointee was estopped from denying the validity of the ordinance. Middleton v. State, 120 Ind. 166; s. c. 22 N. E. 123, was decided on the same principle; also Town of Hendersonville v. Price, 96 N. C. 423; s. c. 2 S. E. 155; City of Burlington v. Gilbert, 31 Iowa 356; Daniels v. Tearney, 102 U. S. 415; Ferguson v. Landram, 5 Bush (Ky.) 230; Mayor &c. v. Sonneborn, 113 N. Y. 423; s. c. 21 N. E. 121; Commonwealth v. Wolbert, 6 Binn. (Pa.) 292; Postmaster-General v. Rice, Gilpin 554; Ryan v. Martin, 91 N. C. 464.

[77] Town of Monticello v. Cohn, 48 Ark. 254; s. c. 3 S. W. 30 (an action on a bond given by defendant to the corporation for a privilege, and it was held he could not plead the want of corporate power to make the contract); National Bank v. Matthews, 98 U. S. 621; Parish v. Wheeler, 22 N. Y. 494; Whitney Arms Co. v. Barlow, 63 N. Y. 62; Poock v. Lafayette Bld'g Ass'n, 71 Ind. 357; Weber v. Scott Co. &c. Soc., 44 Iowa 239; City of Helena v. Turner, 36 Ark. 577.

[78] City of Fergus Falls v. Fergus Falls Hotel Co., 80 Minn. 165; s. c. 83 N. W. 54.

[79] Handy v. City of New Orleans, 39 La. An. 107; s. c. 1 So. 593, sustaining an action based upon charges that the city had in excess of its powers and in violation of prohibitory provisions in its charter passed an ordinance under which a contract of lease of public wharves was entered into. Followed and approved in Conery v. New Orleans Water-Works Co., 39 La. An. 770; s. c. 2 So. 555. As to the subject-matter

§ 668. Taxpayers' suits.—Taxpayers may maintain suits against towns and their officers to prevent or remedy misapplication of town funds, their relations to the municipality being analogous to those of stockholders to a private corporation.[80] And chancery has power in such cases to grant affirmative as well as injunctive relief.[81] Where

and amount involved in giving jurisdiction to the court the taxpayer stands in judgment for the whole community, irrespective of the distributive interest he may have in the matter at issue. Pro hac vice, he is considered as the payer of all taxes. See also, Crampton v. Zabriskie, 101 U. S. 601; Gifford v. New Jersey &c. R. Co., 10 N. J. Eq. 171; Mayor &c. v. Gill, 31 Md. 375; Wade v. City of Richmond, 18 Gratt. (Va.) 583; Page v. Allen, 58 Pa. St. 338; City of New London v. Brainard, 22 Conn. 552; Harney v. Indianapolis &c. R. Co., 32 Ind. 244; Barr v. Deniston, 19 N. H. 170; Stevens v. Rutland &c. R. Co., 29 Vt. 546; Webster v. Town of Harwington, 32 Conn. 131; Terrett v. Town of Sharon, 34 Conn. 105; Merrill v. Plainfield, 45 N. H. 126; Normand v. Board &c., 8 Neb. 18; Oliver v. Keightley, 24 Ind. 514; Drake v. Phillips, 40 Ill. 388; Grant v. City of Davenport, 36 Iowa 396; Douglas v. Mayor &c., 18 Cal. 643; Smith v. Magourich, 44 Ga. 163; Newmeyer v. Missouri &c. R. Co., 52 Mo. 81; Wright v. Bishop, 88 Ill. 302; Rice v. Smith, 9 Iowa 570; Place v. City of Providence, 12 R. I. 1; Allison v. Louisville &c. R. Co., 9 Bush (Ky.) 247; Bound v. Wisconsin &c. R. Co., 45 Wis. 543; Elyton Land Co. v. Ayres, 62 Ala. 413; Boyle v. City of New Orleans, 23 Fed. 843; s. c. 8 Am. & Eng. Corp. Cas. 329; White v. County Com'rs, 13 Or. 317; s. c. 10 Pac. 484; 12 Am. & Eng. Corp. Cas. 485; Whelen's Case, 108 Pa. St. 162; s. c. 1 Atl. 88; 11 Am. & Eng. Corp. Cas. 174; City of Delphi v. Startzman, 104 Ind. 343; s. c. 3 N. E. 937; 11 Am. & Eng. Corp. Cas. 37; City of Valparaiso v. Gardner, 97 Ind. 1; s. c. 7 Am. & Eng. Corp. Cas. 626; 49 Am. R. 416; Roper v. McWhorter, 77 Va. 214; s. c. 4 Am. & Eng. Corp. Cas. 359; Sackett v. City of New Albany, 88 Ind. 473; s. c. 45 Am. R. 467; 2 Am. & Eng. Corp. Cas. 85; Ayer v. Lawrence, 59 N. Y. 192; Flagg v. Parish of St. Charles, 27 La. An. 319; Babington v. Parish of St. Charles, 27 La. An. 321; Stevenson v. Weber, 29 La. An. 105; New Orleans Tax-Payers' Ass'n v. City of New Orleans, 33 La. An. 567; Saloy v. City of New Orleans, 33 La. An. 79; Rivet v. City of New Orleans, 35 La. An. 134.

[80] Russell v. Tate, 52 Ark. 541; s. c. 13 S. W. 130; 7 L. R. A. 180; Town of Jacksonport v. Watson, 33 Ark. 704; Crampton v. Zabriskie, 101 U. S. 601; 2 Dillon Munic. Corp. 914, 915; Blakie v. Staples, 13 Grant (Can.) 67, cited in note on p. 1102, 2 Dillon Munic. Corp.

[81] 2 Story Eq. Jur. 1252; Frost v. Inhabitants &c., 6 Allen (Mass.) 152; Citizens' Loan Ass'n v. Lyon, 29 N. J. Eq. 110; Attorney-General v. Wilson, 1 Craig & Ph. 1; People v. Fields, 58 N. Y. 491; Attorney-General v. City of Boston, 123 Mass. 460; Attorney-General v. Mayor &c., 1 Bligh 312; 2 Dillon Munic. Corp. 909–912. In Appeal of Tarbell, 129 Pa. St. 146; s. c. 18 Atl. 758, the court held it proper to restrain by injunction a board of school directors from appropriating money to the erection of a school building upon lands conveyed to a county in trust "to be appropriated to the use of the public buildings of the county, an academy and church or churches,"

nothing has been done further than the adoption by the common council of a city of a resolution that the mayor and city clerk take immediate steps to let a contract for the construction of water-works for the city, a court of equity will not interfere at the suit of taxpayers to enjoin the threatened enforcement of such resolution, even though its adoption by the council was ultra vires and therefore unauthorized.[82] Where an electric-light company has made large expenditures in carrying out a contract a taxpayer by long delay is not entitled to equitable relief and it is not material that the contract may have been ultra vires.[83]

§ **669. The same subject continued.**—Where a city is attempting to dispose of public property without authority of law, one who has property liable to taxation in the city may maintain an action to restrain such disposition, though he be not a resident of the city.[84]

until the title to the ground on which the buildings might lawfully be erected should have been acquired.

[82] Pedrick v. City of Ripon, 73 Wis. 622; s. c. 41 N. W. 705. See also, Judd v. Town of Fox Lake, 28 Wis. 583; West v. Ballard, 32 Wis. 168; Nevil v. Clifford, 55 Wis. 161; s. c. 12 N. W. 419; Roe v. Lincoln Co., 56 Wis. 66; s. c. 13 N. W. 887; Gilkey v. City of Merrill, 67 Wis. 459; s. c. 30 N. W. 733; Sage v. Town of Fifield, 68 Wis. 546; s. c. 32 N. W. 629; Snyder v. Foster, 77 Iowa 638; s. c. 42 N. W. 506 (where it was held that a taxpayer could maintain an action to prevent the county officers paying out money on a contract for the erection of a bridge which the county had no legal authority to erect); 2 High Injunctions, § 1560; Hospers v. Wyatt, 63 Iowa 264; s. c. 19 N. W. 204; Cornell College v. Iowa Co., 32 Iowa 520; Carthan v. Lang, 69 Iowa 384; s. c. 28 N. W. 650. In Briggs v. Borden, 71 Mich. 87; s. c. 38 N. W. 712, the right of a resident taxpayer of a school district which the township board of school inspectors, acting without jurisdiction, had attempted to divide and parcel out, to other districts, to file a bill to restrain the sale of the schoolhouse and other property of the original district, was sustained. The court said:—"If the school inspectors are permitted to take this last step in the destruction of the district, the mischief and damage to him may be irreparable."

[83] Pugh v. Edison &c. Co., 19 Ohio C. C. 594; Carter v. City of Portland, 4 Or. 339; Packard v. Board, 2 Colo. 338, 350; Whitsett v. Union Depot & R. Co., 10 Colo. 243; s. c. 15 Pac. 339; Union Pac. R. Co. v. Foley, 19 Colo. 280; s. c. 35 Pac. 542; City of Denver v. Girard, 21 Colo. 447, 450; s. c. 42 Pac. 662.

[84] Brockman v. City of Creston, 79 Iowa 587; s. c. 44 N. W. 822. As to residence or citizenship of a person whose interests were about to be prejudiced by action of municipal corporation, not being essential to authorize an action to restrain, see also, Brandirff v. Harrison Co., 50 Iowa 164; Olmstead v. Board, 24 Iowa 33; Litchfield v. Polk Co., 18 Iowa 70. In Brockman v. City of Creston, supra, the court explain their ruling thus:—"It must be remembered that the doctrine we recognize is not based upon the right of the property-owner or tax-payer, resident or non-resident, to dictate

And the court can not inquire into the motives of the prosecutor of such a suit, nor deny him relief because his interest as a taxpayer is inconsiderable. Nor need he defer his action until a tax has actually been levied upon his property by reason of the wrongful disposition of the property of the city. He may have the preventive remedy by injunction as soon as damage is threatened by the unlawful act.[85]

§ 670. **Suits to restrain the enforcement of contracts.**—The supreme court of New Jersey having decided that the resolution of a board of freeholders for the purchase of and payment for land on which to erect a court-house by the issue of bonds was illegal for the lack of authority in them, and the vendor having brought suit on the bonds, the United States supreme court sustained an action of taxpayers for restraining the prosecution of the action, and to enjoin the board from paying the bonds, and to direct a reconveyance of the land and a surrender of the void bonds, holding they were entitled to the relief prayed for.[86] A taxpayer of a city has sufficient interest in the subject-matter to sue to enjoin the consummation of an illegal contract by the city with a bank, by which it is proposed to take the public moneys out of the hands of the legal custodian of them, and deposit them in a bank as a loan at interest.[87] But it has been held that a person suing under a statute which provided that any taxpayer might institute a suit for an injunction to restrain the execution of a contract by a municipal corporation in contravention of its powers in case of the failure of the public prosecutor to institute such suit could not complain that the owners of a majority of the frontage of lots on the proposed line of a street-railroad, the franchise of which, granted by the city, plaintiff attacked as illegal, had not given their

and control the administration of the city government and to nullify by proceedings in the court the lawful acts of the city officers, legislative or executive, done in the administration of the city's affairs, for the reason that the proposed acts of the city do not promote its interest or are against public policy. The foundation of the doctrine is the interference with the rights of the taxpayer in the increase of the burden of taxation, or the liability thereto, by misappropriating the property of the city, which may demand the levy of taxes to acquire other property in its place; or the property, having been acquired through taxation, its disposition would be in effect a misappropriation of taxes, which may occasion levies to take the place of the misapplied tax."

[85] Brockman v. City of Creston, 79 Iowa 587; s. c. 44 N. W. 822.

[86] Crampton v. Zabriskie, 101 U. S. 601; Clark v. Board &c., 9 Neb. 516; s. c. 4 N. W. 246; Pimental v. City of San Francisco, 21 Cal. 351; Argenti v. San Francisco, 16 Cal. 255; Parkersburg v. Brown, 106 U. S. 487; s. c. 1 S. Ct. 442.

[87] Yarnell v. City of Los Angeles, 87 Cal. 603; s. c. 25 Pac. 767.

written consent thereto, he not being an owner of any such lots.[88] A contract for paving a street awarded to contractors for a "vulcanite asphalt pavement," a kind neither called for in the ordinance of the city council nor even hinted at in the advertisement inviting bids, and where the parties proposing to bid were instructed to prepare their own specifications and submit them with their respective bids, has been held illegal, null and void as beyond the power of the council to make, as they did not comply with the statutes for letting such contracts to the lowest bidder.[89]

§ 671. **Injunction the proper remedy.**—A contract made in the name of a city not in the mode and manner and upon the conditions prescribed by the ordinance is void, as a compliance with those conditions by the governing power of the city is essential to the exercise of the power conferred.[90] Where city authorities undertake to make a contract without the lawful power to make it, and the contract, if made, will increase the burden of taxation, taxpayers constitute a special class, having a special interest in the subject-matter distinct from that of the general public. In all such cases injunction is, upon obvious principles, the most convenient and appropriate remedy.[91]

[88] Simmons v. City of Toledo, 5 Ohio C. C. 124.

[89] Mazet v. City of Pittsburgh, 137 Pa. St. 548; s. c. 20 Atl. 693; 27 W. N. C. (Pa.) 73. And a property-owner on the street which was to be paved had a right to maintain a suit to enjoin the doing of the work, though it might be conceded that the bill was filed by him as a cover for an unsuccessful bidder for such contract.

[90] Mayor &c. v. Keyser, 72 Md. 106; s. c. 19 Atl. 706. The court said:—"They had no power to make a contract without advertising for proposals filed within the time designated, nor had they any power to make a contract without opening all the proposals filed within the time designated; nor had they any power to award the contract to any one other than the lowest responsible bidder."

[91] Mayor &c. v. Gill, 31 Md. 375. In a later case, St. Mary's Industrial School v. Brown, 45 Md. 310, 326, an injunction was held to be the proper remedy whenever it appears that municipal corporations and their officers are "acting ultra vires or are assuming or exercising a power over the property of the citizen, or over corporate property or funds, which the law does not confer upon them, and where such unauthorized act may affect injuriously the rights and property of the parties complaining." The cases were approved and followed in Mayor &c. v. Keyser, 72 Md. 106; s. c. 19 Atl. 706, where, after holding that the mayor and aldermen had no power to make a contract for lighting a portion of the city except in the mode and manner prescribed by law, and sustaining the taxpayers' right to an injunction, the court said that the complainants "have a right to require that the money they have contributed for the public benefit shall be spent only for the purposes and in the manner authorized by law, and that every security de-

§ 672. **The same subject continued.**—But a taxpayer can not have a contract of purchase of property for the county set aside as being ultra vires, and the treasurer enjoined from paying warrants issued for the residue of the purchase-money, his action being against the county treasurer, and the supervisors and the county not a party, for the reason that such a decree would be inequitable while the county is allowed to retain the property, and its title could not be disturbed in such an action.[92] Where the consideration received by a corporation under an ultra-vires contract can be restored, a court of equity will not relieve the corporation as against the contract, without providing for a restoration of the consideration.[93]

signed to protect its proper expenditure shall be faithfully observed. This right is a vital one to them, and they are required to allege no other injury than that it is about to be violated. They will be injured if the violation is permitted by the act of violation alone." See also, Talcott v. City of Buffalo, 57 Hun (N. Y.) 43; s. c. 10 N. Y. S. 370.

[92] Turner v. Cruzen, 70 Iowa 202; s. c. 30 N. W. 483.

[93] Turner v. Cruzen, 70 Iowa 202; s. c. 30 N. W. 483, in which case the court held that the county should not be relieved from its contract for the purchase of a poor-farm, which purchase was ultra vires, without a reconveyance to the vendor. The court thus distinguished a class of cases:—"We are aware that there is a class of cases where courts of equity declare a contract ultra vires, and grant relief in favor of a corporation, without any decree for the restoration of the consideration received by the corporation. This is so where municipal funds have been issued in excess of the constitutional limit of indebtedness, and the money obtained thereon has been expended. Courts of equity decree the cancelation of such bond, or enjoin payment without decreeing repayment to the bondholders of the money received by the corporation on the bond. But this results from the necessity of the case. If the courts should decree repayment, the very object of the constitutional provision would be defeated." See also, Pratt v. Short, 53 How. Pr. (N. Y.) 506; Leonard v. City of Canton, 35 Miss. 189; Moore v. Mayor &c., 73 N. Y. 238; County Com'rs &c. v. Hunt, 5 Ohio St. 488. In Nance v. Johnson, 84 Tex. 401; s. c. 19 S. W. 559, it was held that taxpayers could not maintain a suit to enjoin the payment of the school-fund to a teacher under a contract made with him by the school trustees, on the ground that the trustees had no authority to make such a contract with him, as his school was a sectarian one, unless they had exhausted the remedies allowed them under the law of appeal from the school trustees to the superintendent of public instruction, and from him to the state board of education, under Sayles' civil statutes of Texas, art. 3715. In Town of Winamac v. Huddleston, 132 Ind. 217; s. c. 31 N. E. 561, a taxpayer's action for injunction to restrain the issue of bonds of a school district which were about to be issued without authority was sustained, as there was no other remedy of equal power and efficiency, the case coming within the rule in Watson v. Sutherland, 5 Wall. 74; Denny v. Denny, 113 Ind. 22; s. c. 14 N. E. 593; Bishop v. Moorman, 98 Ind. 1;

s. c. 49 Am. R. 731; English v. Smock, 34 Ind. 115, 124; s. c. 7 Am. R. 215; Elson v. O'Dowd, 40 Ind. 300, 302; Clark v. Jeffersonville &c. R. Co., 44 Ind. 248; Thatcher v. Humble, 67 Ind. 444; Spicer v. Hoop, 51 Ind. 365, 370; Bonnell v. Allen, 53 Ind. 130.

CHAPTER XVII.

IMPLIED POWERS AND EMINENT DOMAIN.

(a) IMPLIED POWERS.

SECTION

673. General statement of the rule.
674. Compromise of claims.
675. The same subject continued—Application of the rule in Iowa.
676. The dissenting opinion in the Iowa case.
677. Compromise of ultra-vires claims.
678. Submission to arbitration.
679. Employment of attorneys.
680. Power to hold property in trust.
681. Acquisition of property for other than municipal purposes.
682. The same subject continued—Discretion in erecting public buildings.
683. Power to indemnify officers.
684. The same subject continued.
685. Offers of rewards.
686. The same subject continued—The power generally denied.
687. The same subject continued—The foregoing rule qualified.
688. Expenditures in obtaining or opposing legislation.

(b) EMINENT DOMAIN.

689. Nature and definition.
690. The same subject continued—Constitutional limitations.
691. What property may be taken.
692. Quantity of estate.
693. What constitutes a taking.
694. The same subject continued—The leading case.
695. The same subject continued—Constitutional amendments.

SECTION

696. Property already appropriated to public use.
697. The same subject continued.
698. Change of grade.
699. Change of use—Additional use.
700. The same subject continued—Electric railways.
701. Grant of power to municipal corporations.
702. Public use and necessity of appropriation, by whom determined.
703. Legislative declaration conclusive.
704. Public use as respects municipalities—Parks and streets.
705. The same subject continued—Water, gas, etc.
706. The same subject continued—Cemeteries, sewers, etc.
707. The same subject continued—Leasing for public use.
708. The same subject continued—Ornamental purposes.
709. Notice of proceeding—Necessity for.
710. Parties entitled to notice.
711. Service of notice.
712. Treaty with the owner.
713. The application or petition.
714. The tribunal.
715. Right to jury trial.
716. Right to abandon proceedings.
717. Damages upon discontinuance of proceedings.
718. Compensation.
719. Elements in estimating compensation.
720. The same subject continued.
721. Benefits.

SECTION
722. Payment.
723. Review of proceedings—Certiorari.
724. The same subject continued—Appeal.

(a) IMPLIED POWERS.

§ 673. General statement of the rule.—The powers of public corporations are either express or implied. "The former are those which the legislative act under which they exist confers in express terms; the latter are such as are necessary to carry into effect those which are expressly granted and which must therefore be presumed to have been within the intention of the legislative grant. * * * But without being expressly empowered so to do they may sue and be sued;[1] may have a common seal; may purchase and hold lands and other property for corporate purposes and convey the same; may make by-laws whenever necessary to accomplish the design of the incorporation and enforce the same by penalties; may enter into contracts to effectuate the corporate purposes. Except as to these incidental powers, which need not be though they usually are mentioned in the charter, the charter itself, or the general law under which they exist, is the measure of the authority to be exercised. And the general disposition of the courts of this country has been to confine municipalities within the limits that a strict construction of the grants of powers in their charters will assign to them; thus applying substantially the same rule that is applied to charters of private incorporations."[2] Implied power of a municipal corporation is a power necessarily incident to the exercise of those powers expressly granted and directly and immediately appropriate to their exercise.[3]

[1] "I have no doubt of the right of the school district as a body corporate to interfere and ask the aid of equity to prevent the consummation of an illegal and void apportionment and creation of a debt against it by the collection of the same out of the taxable property within its limits:" Morse, J., in School Dist. &c. v. School Dist. &c., 63 Mich. 51, 58; s. c. 29 N. W. 489. Courts take judicial notice of the powers and capacities of public corporations, and in actions by them it is not necessary to allege a legal capacity to sue: City of Janesville v. Milwaukee &c. R. Co., 7 Wis. 484.

[2] Cooley Const. Lim. (6th ed.) 231. "A municipal corporation possesses not only the powers specifically conferred upon it by its charter, but also such as are necessarily incident to or may fairly be implied from those powers, including all that are essential to the declared object of its existence:" Village of Carthage v. Frederick, 122 N. Y. 268, 271; s. c. 25 N. E. 480; citing Le Couteulx v. City of Buffalo, 33 N. Y. 333; Ketchum v. City of Buffalo, 14 N. Y. 356; Buffalo &c. R. Co. v. City of Buffalo, 5 Hill (N. Y.) 209; 1 Dillon Munic. Corp. (4th ed.), § 89; Angell & Ames Corp. 346, 364; 2 Kyd Corp. 149. See also, 15 Am. & Eng. Encyc. Law 1040.

[3] Gundling v. City of Chicago, 176

§ 674. Compromise of claims.—It is well settled that municipal corporations have the power to effect the compromise of claims in favor of or against them. This is a corollary to the right to sue and be sued.[4] They may compromise doubtful controversies in which the corporation is a party either as plaintiff or defendant. A judgment in favor of a city is not to be regarded as final while the right of appeal exists; and at any time before the period in which to appeal expires, the city council may lawfully compromise the case and settle the claim by the acceptance of a less sum than that of the judgment.[5] A fortiori the proper authorities may settle a suit in which judgment has been rendered in favor of the plaintiff corporation, but from which the defendant has appealed.[6]

§ 675. The same subject continued—Application of the rule in Iowa.—A more radical doctrine in favor of the power to compromise is declared by the supreme court of Iowa. By statute in that state county supervisors are "to represent their respective counties and to have the care and management of the property and business of the county." Upon an application for a writ of certiorari to test the power of the supervisors to settle a judgment in its favor for less than the amount recovered it was alleged and admitted by demurrer that the judgment debtor was perfectly solvent. The court sustained

Ill. 340; s. c. 52 N. E. 44; People v. Chicago Gas Trust Co., 130 Ill. 268; s. c. 22 N. E. 798; Chicago &c. R. Co. v. City of Chicago, 148 Ill. 141; s. c. 35 N. E. 881; Mather v. City of Ottawa, 114 Ill. 659; s. c. 3 N. E. 216.

[4] People v. Board &c., 27 Cal. 655; People v. Coon, 25 Cal. 635; Inhabitants &c. v. Lowell, 20 Maine 178; Inhabitants &c. v. Leadbetter, 16 Maine 45; State v. Martin, 27 Neb. 441; s. c. 43 N. W. 244; Grimes v. Hamilton Co., 37 Iowa 290; Mills Co. v. Burlington &c. R. Co., 47 Iowa 66; Hall v. Baker, 74 Wis. 118; s. c. 42 N. W. 104; 27 Am. & Eng. Corp. Cas. 208; Artz v. Chicago &c. R. Co., 34 Iowa 153.

[5] Agnew v. Brall, 124 Ill. 312; s. c. 16 N. E. 230; 20 Am. & Eng. Corp. Cas. 134. But the court said that the council had no power to sell or in any manner to dispose of the property of the corporation without consideration; and probably no right to discharge a debt without payment which may be held against parties who are solvent and responsible where no controversy exists in regard to the validity and binding effect of the indebtedness. This point is discussed in the following two sections.

[6] Town of Petersburg v. Mappin, 14 Ill. 193; s. c. 56 Am. D. 501, where the town accepted payment of the costs in full settlement of the judgment. Here also, the court said that public officers could not, under the pretense of satisfaction, discharge a debt due the corporation without payment. "The law vests them with a discretion in such matters which they are to exercise for the best interests of the corporation. Settlement of an existing controversy, if made in good faith, binds the corporation, but if collusively made it is not obligatory:" Ibid., p. 195.

the action of the board. Premising that the power to compromise a claim before it has been reduced to a judgment is unquestionable and after judgment when the debtor's solvency is doubtful, Adams, C. J., continued: "It is true that in the case at bar the plaintiff avers that the judgment debtor was solvent. But that averment is immaterial. We can not go into any such question of fact in this action. The question before us is one of jurisdiction. If the board can make a compromise with an insolvent judgment debtor it must be allowed to judge for itself in any given case as to whether the debtor is insolvent or not, and an error made in this respect, however great, would not affect its jurisdiction."[7]

§ 676. The dissenting opinion in the Iowa case.—But in a dissenting opinion, Beck, J., uses the following vigorous language: "My brethren insist that the defendants satisfied the judgment in the exercise of their power to compromise an action to which the county is a party. * * * But an insuperable objection to this position is that the defendants did not compromise the action for the very best of reasons—no action in fact was pending. There had been an action, but a judgment had been rendered therein. If there was a 'compromise' it was not of an action, but of a valid undisputed claim upon a judgment. In the case which is cited[8] there was an action against the county which it resisted and litigation was pending. There could well be a compromise in that case; in this case there was no pending litigation and no dispute as to the validity of the county's claim on the judgment. In my judgment the canceling of the judgment upon the payment of a part only can not be called a compromise. * * * It would be just as improper to apply the word to such a transaction as to say that in a distribution of alms a compromise is made with the mendicant." Further on in combating the position of the majority

[7] Collins v. Welch, 58 Iowa 72, 73; s. c. 12 N. W. 121; 43 Am. R. 111. The opinion proceeds as follows:—"It is true that where a claim has been reduced to judgment all questions pertaining to the rightfulness of the claim have been adjudicated. But questions may arise subsequent to the rendition of the judgment, and where they are of such a character as to render a compromise expedient it is manifest that the board ought to have the power to make it. Suppose, for instance, that the financial condition of the judgment debtor is such that the board is unable to discover any way of collecting any part of the judgment. The board should have the power to accept a part in satisfaction of the whole if in its judgment the best interests of the county would thereby be promoted. All rules of business conduct by which the prudent person is governed are applicable to a county in the management of its affairs under similar circumstances."

[8] Grimes v. Hamilton Co., 37 Iowa 290.

of the court that if the board had jurisdiction their action could not be reviewed on questions of fact, he continued: "I have heard much that has been written upon the subject of the jurisdiction of courts, but this doctrine is new to me. I have always understood the rule to be that the jurisdiction of courts (I have never understood that the board of supervisors is higher than the courts) may always be inquired into whenever their judgments are brought in question. It is true that their decisions upon questions of process whereby they obtained jurisdiction can not be collaterally assailed. But if upon the face of the record of a judgment it appears that jurisdiction is wanting the judgment is void and will be so regarded, both collaterally and on direct attacks."[9] In the author's view the dissenting opinion is the sounder and safer.

§ 677. **Compromise of ultra-vires claims.**—The right to compromise disputed claims came into conflict with the doctrine of ultra vires in a case in Massachusetts in such a way as to afford ground for a vigorous contest. The defendant, a quasi-corporation called a fire district, was created by the legislature and invested with certain express and ample powers for the extinguishment of fires within its limits. The district established an electric fire-alarm system, one of the wires of which ran into the house where the plaintiff lived, and during a thunder-storm she was injured by electricity conducted into the house by means of the wire. It was not controverted that the establishment of the fire-alarm system was within the defendant's authority. The plaintiff sued the defendant and obtained a verdict with substantial damages in the superior court under instructions from the presiding justice authorizing it to be rendered. Exceptions were taken, and before they were argued in the appellate court the defendant passed a vote appropriating a sum less than the verdict to be paid in compromise of the action and claim, which the plaintiff accepted and afterward brought suit to recover. The defendant contended that it was not liable in the first instance for any negligence of the fire-department or of its members, and that it was wholly beyond its power to assume liability therefor by a compromise of the plaintiff's claim. "This latter objection," said the court, "is clearly untenable, and *we have therefore no occasion to consider the former.*" The court also declared that whether the result of a litigation depends chiefly upon the ascertainment of the facts by the verdict of a jury, or upon the determination of the rules of law found applicable by the

[9] Collins v. Welch, 58 Iowa 72; s. c. 12 N. W. 121; 43 Am. R. 111.

court, in either case the uncertainty is one upon which compromises rest and are upheld by the law.[10]

§ 678. Submission to arbitration.—The authorities fully sustain the proposition that a municipal corporation may, unless restricted by its charter, submit a disputed claim against it to arbitration.[11] The governing body of the corporation is the proper agent to exercise this power, and it may intrust the city attorney with the selection of the arbitrators.[12] It will be assumed that the attorney of the corporation may in virtue of his retainer consent to a reference of a cause, though he had no authority under seal to appear or to consent to a reference, and after award made it will not be set aside on the supposed want of authority in the attorney to consent to a submission.[13] If a statute should direct an ascertained sum of money to be paid to an ascertained person by the authorities of a township or other political

[10] Prout v. Inhabitants &c., 154 Mass. 450; s. c. 28 N. E. 679; citing to the proposition that the power to sue is inherent, Inhabitants &c. v. Wood, 13 Mass. 193; Stebbens v. Jennings, 10 Pick. (Mass.) 172, 188; Linehan v. City of Cambridge, 109 Mass. 212; 2 Kent. Com. 277, 278, 283, 284 and notes; Angell & Ames Corp., §§ 23, 24, 78; 1 Dillon Munic. Corp., §§ 21, 22. And that the power of compromise is incident to the liability to be sued, Cushing v. Inhabitants &c., 6 Cush. (Mass.) 389; Drake v. Inhabitants &c., 6 Cush. (Mass.) 393; Matthews v. Inhabitants &c., 131 Mass. 521; s. c. 134 Mass. 555; Inhabitants &c. v. Inhabitants &c., 21 Pick. (Mass.) 349, 359; Bean v. Inhabitants &c., 23 Maine 117; President &c. v. Mappin, 14 Ill. 193; Agnew v. Brall, 124 Ill. 312; s. c. 16 N. E. 230; Board &c. v. Bowen, 4 Lans. (N. Y.) 24, 30, 31; Supervisors &c. v. Birdsall, 4 Wend. (N. Y.) 453; Dillon Munic. Corp., §§ 30, 477, 478.

[11] Paret v. Bayonne, 39 N. J. L. 559; Kane v. City of Fond du Lac, 40 Wis. 495; Brady v. Mayor &c., 1 Barb. (N. Y.) 584; City of Shawneetown v. Baker, 85 Ill. 563; Inhabitants &c. v. Inhabitants &c., 16 Mass. 396; Inhabitants &c. v. Brazer, 11 Mass. 447; Dix v. Town of Dummerstown, 19 Vt. 262; Remington v. Harrison Co. Court, 12 Bush (Ky.) 148; In re Arbitration between Eldon and Ferguson Townships, 6 Up. Can. L. J. 207; District Tp. of Walnut v. Rankin, 70 Iowa 65; s. c. 29 N. W. 806 (which was a case of a claim in favor of a town against its treasurer, and where the court said that an arbitration of differences is just as legitimate a mode of settlement as by action. "All persons" in a statute relating to arbitration includes municipal corporations); Springfield v. Walker, 42 Ohio St. 543. See also, Smith v. City of Philadelphia, 13 Phila. (Pa.) 177.

[12] Kane v. City of Fond du Lac, 40 Wis. 495. It was held in that case that an alderman who had been active in the council in endeavoring to procure payment of plaintiff's claim against the city was not thereby rendered incompetent to act as an arbitrator. At any rate the city, having notice of his conduct, could not object after award made.

[13] Paret v. Bayonne, 39 N. J. L. 559; Faviell v. Eastern &c. R. Co., 2 Exch. 344; Alexandria Coal Co. v. Swann, 5 How. 83.

precinct, mandamus might be used to coerce such payment in case of default; but the report of a statutory referee, confirmed by the court, is in no better legal position than an award made by arbitrators, and the remedy must be an ordinary action.[14]

§ 679. **Employment of attorneys.**—A municipal corporation may without express authority, unless especially restricted, employ an attorney to attend to the corporate interests and to prosecute and defend actions brought by or against the municipality.[15] But it can not make a valid contract for the employment of an attorney to file a bill in which it seeks to destroy its corporate existence.[16] And there is no implied power to employ attorneys to conduct or assist in conducting criminal prosecutions.[17] And where the law has provided an officer whose duty it is to attend to all the legal business of a

[14] State v. Board &c., 41 N. J. L. 135.

[15] Lewis v. Mayor &c., 9 C. B. (N. S.) 401; Sherman v. Carr, 8 R. I. 431; Smith v. Mayor &c., 13 Cal. 531; Hornblower v. Duden, 35 Cal. 664; Thatcher v. Commissioners, 13 Kan. 182; Ellis v. Washoe Co., 7 Nev. 291; Clarke v. Lyon Co., 8 Nev. 181; Wilhelm v. Cedar Co., 50 Iowa 254; Town of Mt. Vernon v. Patton, 94 Ill. 65; Roper v. Town of Laurienburg, 90 N. C. 427; s. c. 7 Am. & Eng. Corp. Cas. 130; Cullen v. Town of Carthage, 103 Ind. 196; s. c. 2 N. E. 571; 14 Am. & Eng. Corp. Cas. 256; 53 Am. R. 504; Town of Bruce v. Dickey, 116 Ill. 527; s. c. 6 N. E. 435; State v. Heath, 20 La. An. 172; s. c. 96 Am. D. 390. County commissioners acting in behalf of the county possess this power: Ellis v. Washoe Co., 7 Nev. 291; Jack v. Moore, 66 Ala. 184; Huffman v. Board &c., 23 Kan. 281. But their action must be taken at a legal session of the board: McCabe v. Board &c., 46 Ind. 380; Board &c. v. Ross, 46 Ind. 404; Butler v. City of Charlestown, 7 Gray (Mass.) 12; Thatcher v. Commissioners, 13 Kan. 182. See also, City of Bryan v. Page, 51 Tex. 532; s. c. 32 Am. R. 637; Carroll v. City of St. Louis, 12 Mo. 444. And they can not contract for services for a period beyond the time when by operation of law the board will be reorganized: Board &c. v. Taylor, 123 Ind. 148; s. c. 23 N. E. 752; 30 Am. & Eng. Corp. Cas. 294. Nor for an unreasonably large contingent fee: Chester Co. v. Barber, 97 Pa. St. 455. Counsel may be employed to attend to corporate interests outside of the territorial limits of the corporation or in another state: City of Memphis v. Adams, 9 Heisk. (Tenn.) 518; s. c. 24 Am. R. 331. Employment by a mayor alone was sustained in an extreme case: City of Louisville v. Murphy, 86 Ky. 53; s. c. 5 S. W. 194; 9 Ky. L. 310; 18 Am. & Eng. Corp. Cas. 421.

[16] Daniel v. Mayor &c., 11 Humph. (Tenn.) 582.

[17] Hight v. Board &c., 68 Ind. 575. Not even against an official indicted for embezzling corporate funds: Board &c. v. Ward, 69 Ind. 441; Montgomery v. Board &c., 22 Wis. 69; State v. Commissioners &c., 21 Ohio St. 648. But where a town has an interest in the fines it may employ an attorney to assist the state's attorney: People v. Warren, 14 Ill. App. 296.

county it has been held that the county can not employ counsel.[18] Counsel may be employed not only in suits in which the corporation is a party on the record, but in those in which it may be a party in interest.[19]

§ 680. **Power to hold property in trust.**—Municipal corporations may not only take and hold property in their own right by direct gift, conveyance or devise,[20] but they are capable, unless specially restrained, of taking property, real and personal, in trust for purposes not foreign to their institution, and not incompatible with the objects of their organization.[21] Its capacity to take and execute trusts of this kind is not limited to objects technically denominated charities or pious uses, or to religious or educational purposes, and is circumscribed by no other limitations than such as should exclude inconsist-

[18] Brome v. Cuming Co., 31 Neb. 362; s. c. 47 N. W. 1050; 34 Am. & Eng. Corp. Cas. 481. See also, Platte Co. v. Gerrard, 12 Neb. 244; s. c. 11 N. W. 298; Board &c. v. Tate, 10 Neb. 193; s. c. 4 N. W. 1044; Ramson v. Mayor &c., 24 Barb. (N. Y.) 226; Clough v. Hart, 8 Kan. 487; State v. Mayor &c., 40 N. J. L. 186. Cf. Hugg v. City Council &c., 29 N. J. Eq. 6.

[19] Ellis v. Washoe Co., 7 Nev. 291; Thatcher v. Commissioners, 13 Kan. 182; Smith v. Mayor &c., 13 Cal. 531; Hornblower v. Duden, 35 Cal. 664; Jack v. Moore, 66 Ala. 184; Curtis v. Gowan, 34 Ill. App. 516; Doster v. Howe, 28 Kan. 353; Cushing v. Inhabitants &c., 6 Cush. (Mass.) 389. As to what does not constitute a sufficient interest, see Halstead v. Mayor &c., 3 N. Y. 430; Smith v. Mayor &c., 4 Lea (Tenn.) 69. A town has power to employ counsel to defend an action for false imprisonment brought against the town marshal by a person arrested by him for violating a town ordinance: Cullen v. Town of Carthage, 103 Ind. 196; s. c. 2 N. E. 571; 53 Am. R. 504; 14 Am. & Eng. Corp. Cas. 256. See also, Roper v. Town of Laurienburg, 90 N. C. 427; s. c. 7 Am. & Eng. Corp. Cas. 130.

[20] Sargent v. Cornish, 54 N. H. 18; McDonogh v. Murdoch, 15 How. 367; 2 Dillon Munic. Corp., § 566, and cases there cited; 15 Am. & Eng. Encyc. Law 1060, and cases cited.

[21] Vidal v. Mayor &c., 2 How. 127; Perin v. Carey, 24 How. 465; Trustees v. Peaslee, 15 N. H. 317; Chapin v. School Dist., 35 N. H. 445; The Dublin Case, 38 N. H. 459. Education is not an incongruous element in municipal affairs, and bequests for that purpose are valid so far as the capacity to hold is concerned: Maynard v. Woodward, 36 Mich. 423; Hathaway v. Sackett, 32 Mich. 97; Yates v. Yates, 9 Barb. (N. Y.) 324; Bell Co. v. Alexander, 22 Tex. 350; Common Council &c. v. State, 5 Ind. 334; Inhabitants &c. v. Cole, 3 Pick. (Mass.) 232; Christy v. Commissioners &c., 41 Ohio St. 711; Barnum v. Mayor &c., 62 Md. 275. Bequest for the relief of the poor: Board &c. v. Rogers, 55 Ind. 297; Craig v. Secrist, 54 Ind. 419. For a hospital: Mayor &c. v. Elliott, 3 Rawle (Pa.) 170. For highways and bridges: Town of Hamden v. Rice, 24 Conn. 350. For a town building: Coggeshall v. Pelton, 7 Johns. Ch. (N. Y.) 292. For purchase of fire-engines: Wright v. Linn, 9 Pa. St. 433.

ent, incompatible and improper objects. Thus, it has been held that a town is capable of holding in trust a sum of money, the income to be invested yearly in the purchase and use for display of United States flags.[22]

§ 681. Acquisition of property for other than municipal purposes.—In an action of ejectment by a town it adduced evidence of possession for more than twenty years in proof of title. It appeared, however, that the premises were not used for municipal purposes, but were part of a larger tract which was for most of the time in the occupation of tenants of the town. The defendants contended that the town could not acquire title by possession for any other than municipal purposes and requested the court so to charge, and the court refusing to do so they excepted. "The cases cited in support of these exceptions," said Durfee, C. J., "do not go to the point that a town can not acquire land by possession for other than municipal purposes, but only to the point that it is ultra vires for a town to purchase land for other than such purposes. We think this quite a different thing; for a town can not purchase land without expending its moneys, and it has no right to expend its moneys, raised by taxation or otherwise for municipal purposes, for other purposes. The acquirement of land by possession does not involve an expenditure any more than does the acquirement of land by deed of gift or by devise; and it has been decided that a gift or devise of land to a town is good even though the land be given or devised in general terms, and be accepted without any intent to use it strictly for municipal purposes."[23]

§ 682. The same subject continued—Discretion in erecting public buildings.—The validity of appropriations for the purpose of erecting or repairing public buildings is sometimes contested in the courts on the ground that the contemplated accommodations exceed the actual needs of the corporation and are to be rented in part to private individuals. The distinction drawn in the authorities is this: If the

[22] Sargent v. Cornish, 54 N. H. 18. The court there said that it seems to be impossible to prescribe in definite terms the almost innumerable objects of a liberal bounty with which a town might be advantageously and happily endowed, directly or in trust. In this case it was held that if a city violates or abuses its power to purchase property it is a matter solely between it and the state. Courts will not determine the question of misuser by declaring void conveyances made in good faith: Chambers v. City of St. Louis, 29 Mo. 543. See also, Inhabitants &c. v. Eaton, 13 Mass. 371; Holten v. Board &c., 55 Ind. 194.

[23] Town of New Shoreham v. Ball, 14 R. I. 566; citing Inhabitants &c. v. Eaton, 13 Mass. 371; Sargent v. Cornish, 54 N. H. 18; Dillon Munic. Corp., § 437.

primary object of a public expenditure is to subserve a public municipal purpose, the expenditure is legal notwithstanding it also involves as an incident an expense which, standing alone, would not be lawful. But if the primary object is to promote some private end, the expenditure is illegal even though it may incidentally serve some public purpose.[24] It is proper in constructing buildings to make suitable provision for prospective wants.[25] Proceedings in raising and expending money within the limits of the corporate powers in these particulars will not be collaterally impeached and held void because in the opinion of a court and jury a less sum would have answered the immediate necessities of the corporation or the money might have been more judiciously and economically expended.[26]

§ 683. **Power to indemnify officers.**—A municipal corporation may legally indemnify an officer acting in good faith for a loss incurred in the discharge of his official duties. Thus, the court refused to enjoin a town from indemnifying one of its officers for his expenses in successfully resisting a suit for damages for malicious prosecution in procuring, by the direction of the town council, the arrest of the plaintiff on a charge of obtaining public moneys by false pretenses,

[24] Bates v. Bassett, 60 Vt. 530; s. c. 15 Atl. 200. "This is the test," said the court in that case, "where good faith is exercised in making the expenditure. If a public purpose is set up as a mere pretense to conceal a private purpose, of course the expenditure is illegal and fraudulent." A town hall was fitted up with theatrical apparatus and part of the building was rented as a post-office. The court sustained a tax to defray the expense. See also, Worden v. Inhabitants &c., 131 Mass. 23; Inhabitants &c. v. Camden Village Corp., 77 Maine 530; s. c. 1 Atl. 689; City of Jacksonville v. Ledwith, 26 Fla. 163; s. c. 7 So. 885; Bell v. City of Platteville, 71 Wis. 139; s. c. 36 N. W. 831; Konrad v. Rogers, 70 Wis. 492; s. c. 36 N. W. 261; Ely v. City of Rochester, 26 Barb. (N. Y.) 133; Reynolds v. Mayor &c., 8 Barb. (N. Y.) 597; Poillon v. City of Brooklyn, 101 N. Y. 132; s. c. 4 N. E. 191; Attorney-General v. City of Eau Claire, 37 Wis. 400 (where it was held that the legislature could not authorize the erection of a dam across the river at the expense of the city "for the purpose of leasing water-power for private purposes" merely; yet, upon subsequent amendment of the act, it was in effect held that as the city had lawful authority to erect the dam "for the purpose of waterworks for the city," it might as incident thereto lease for private purposes any excess of water-power not required); State v. City of Eau Claire, 40 Wis. 533; Green Bay &c. Co. v. Kaukauna &c. Co., 70 Wis. 635; s. c. 35 N. W. 529; 36 N. W. 828.

[25] Greenbanks v. Boutwell, 43 Vt. 207; French v. Inhabitants &c., 3 Allen (Mass.) 9.

[26] Eddy v. Wilson, 43 Vt. 362; Greenley v. People, 60 Ill. 19; Spaulding v. City of Lowell, 23 Pick. (Mass.) 71; Torrent v. Common Council &c., 47 Mich. 115; s. c. 10 N. W. 132.

the plaintiff having been acquitted upon the trial.[27] So, also, where the mayor of a city, in the execution of a law conferring certain powers upon him, and in good faith but in excess of his authority, trespassed upon the rights of a citizen, who sued for false imprisonment and recovered a verdict, it was pronounced to be a "legitimate duty" and a "usual and ordinary expense" for the city to reimburse him.[28]

§ 684. **The same subject continued.**—But in order to justify an expenditure of money in indemnifying an officer three things must appear: first, the officer must have been acting in a matter in which the corporation had an interest; second, he must have been acting in the discharge of a duty imposed or authorized by law; and third, he must have acted in good faith.[29] In two Connecticut cases the enforcement of this rule resulted in a denial of the right to indemnify. The common council of the city of Bridgeport, under authority of the city charter, enacted a by-law with regard to wharves, and the anchoring, moving and mooring of vessels in the harbor, and ap-

[27] This was within the power conferred by the statute to raise money for "town purposes": State v. Council &c., 38 N. J. L. 430; s. c. 20 Am. R. 404; citing King v. Inhabitants &c., 4 T. R. 591; Attorney-General v. Mayor, 2 Mylne & Cr. 406; Reg. v. Town Council &c., 4 Q. B. 893; Reg. v. Town Council &c., 4 Q. B. 900, n. a; Lewis v. Mayor &c., 9 C. B. (N. S.) 401; Reg. v. Mayor &c., 10 Ad. & El. 281; Reg. v. Paramore, 10 Ad. & El. 286; Nelson v. Inhabitants &c., 7 Pick. (Mass.) 18; Bancroft v. Inhabitants &c., 18 Pick. (Mass.) 566; Fuller v. Inhabitants &c., 11 Gray (Mass.) 340 (where the members of a school committee were sued for libel because of some statements made in their official report to the town. For their expenses in successfully defending themselves the town voted an indemnity and the court held that it had a right to do so); Hadsel v. Inhabitants &c., 3 Gray (Mass.) 526; State v. Board &c., 37 N. J. L. 254. Cf. Hotchkiss v. Plunkett, 60 Conn. 230; s. c. 22 Atl. 535, cited in the following section.

[28] Sherman v. Carr, 8 R. I. 431. The court said that the opposite rule would tend to make an officer too cautious if not too timid in the exercise of his powers—"powers which must be frequently exercised for the protection of society before and not after a thorough investigation of the case in which he is called upon to act;" and that, although it may be urged that if the officer has the right to fall back on the city treasury there is danger that he will become reckless and overbearing, still it would seem to be the wisest course to leave the matter of indemnification to the discretion of those who represent the interests of the city. "We know of no case," continued the court, "in which, while the officer continues to act in behalf of the community and not in his own behalf, it is held that the community can not indemnify him:" Ibid., p. 434. See also, Nelson v. Inhabitants &c., 7 Pick. (Mass.) 18; quoted at length in Cooley Const. Lim. (6th ed.) 258.

[29] Hotchkiss v. Plunkett, 60 Conn. 230; s. c. 22 Atl. 535.

pointed an officer called a superintendent of wharves to discharge the duty provided for in the by-law. The performance of his duties was not enforced by a penalty, and he acted only upon application of parties interested and at their expense. While acting in good faith he ordered a vessel lying at a wharf to be hauled astern to make more room for another at an adjoining wharf, and was sued for damages by the owner of the wharf. It was decided that the city had no sufficient interest in the matter to sustain a vote of indemnity for his expenses in defending the suit. "He is not the agent or servant of the city," said the court, "nor subject to its control, and it is not responsible for his official negligence, misconduct or delinquency, nor benefited by his official fidelity. With respect to his official character and obligation the city has no duty to perform, no rights to defend, no interest to protect, and no pecuniary or corporate concern in the subject-matter connected with his official duty. Want of interest involves the want of power and is necessarily fatal to the claims of the city."[30] And where the members of a board of education of a school district were sued for an injury to the business reputation of the plaintiffs by their refusal to entertain a bid offered by the plaintiffs for furnishing stationery for the district on the ground that they had sometime before dealt dishonestly with the district, the money of the district could not be used for the defense of the suit.[31]

[30] Gregory v. City of Bridgeport, 41 Conn. 76; s. c. 19 Am. R. 485; citing Merrill v. Plainfield, 45 N. H. 126; Gove v. Epping, 41 N. H. 539; Halstead v. Mayor &c., 3 Comst. (N. Y.) 430; Martin v. Mayor &c., 1 Hill (N. Y.) 545; Hodges v. City of Buffalo, 2 Denio (N. Y.) 110; Vincent v. Inhabitants &c., 12 Cush. (Mass.) 103; Stetson v. Kempton, 13 Mass. 272; Nelson v. Inhabitants &c., 7 Pick. (Mass.) 18; Fuller v. Inhabitants &c., 11 Gray (Mass.) 340; Babbitt v. Selectmen &c., 3 Cush. (Mass.) 530; Bancroft v. Inhabitants &c., 18 Pick. (Mass.) 566; Tash v. Adams, 10 Cush. (Mass.) 252; Claflin v. Inhabitants &c., 4 Gray (Mass.) 502; Hood v. Mayor &c., 1 Allen (Mass.) 103; Briggs v. Whipple, 6 Vt. 95; Baker v. Inhabitants &c., 13 Maine 74; Fisk v. Hazard, 7 R. I. 438; City of New London v. Brainard, 22 Conn. 552; Webster v. Town of Harwinton, 32 Conn. 131.

[31] Hotchkiss v. Plunkett, 60 Conn. 230; s. c. 22 Atl. 535. Andrews, C. J., pointedly remarked that there was no duty authorized or imposed to make charges of dishonesty and cheating. See also, Fuller v. Inhabitants &c., 11 Gray (Mass.) 340. A corporation can not appropriate money to pay the costs of an official who has been prosecuted for official misconduct, although he be acquitted: People v. Lawrence, 6 Hill (N. Y.) 244; Merrill v. Plainfield, 45 N. H. 126; Butler v. City of Milwaukee, 15 Wis. 493; Smith v. Mayor &c., 4 Lea (Tenn.) 69, 72. See also, Halstead v. Mayor &c., 3 N. Y. 430.

§ 685. Offers of rewards.—The question whether towns, cities or counties have the implied power to bind themselves by offers of reward for the arrest and conviction of criminals has been considered in several cases, and the conclusion supported by the weight of authority is adverse to the existence of such a power. One of the earliest cases involving this point arose in Massachusetts, and Chief Justice Shaw there held that a statute limiting the power of the mayor and aldermen in offering rewards to a certain amount did not operate to restrain the *city council,* as the representatives of the whole body of the people, from offering a greater amount for the apprehension and conviction of any person who should set fire to a building with felonious intent.[32] The courts wherein this power has been denied to municipalities do not attempt to cope with this case as a direct opposing authority, nor does it seem to the author that they parry the force of it satisfactorily. Some of them take no notice of it whatever, while it has been said not to be applicable because the Massachusetts statute conferred the power to offer rewards.[33] And again, that as the reward was for the detection of persons who should *thereafter* be guilty of the crime of arson within the limits of the city, it was "a simple police measure, as legitimate as the employment of police to guard the inhabitants and their property against violators of the law."[34] But the learned chief justice did not rest his decision upon either of these grounds or refer to them in any manner. In Pennsylvania it was held to be within the legitimate province of the burgesses of a town to offer rewards for the detection of offenders against the general safety of its inhabitants (incendiaries in that case). The court said: "The burgesses * * * are a part of the public police. It is therefore the state by one of its departments that offers a reward for the detection and conviction of an unknown offender against its laws."[35]

§ 686. The same subject continued—The power generally denied.—But, with the exceptions noted in the preceding section, the decisions are unanimous, and the purely implied power to tax the inhabitants for the apprehension of criminals is not only denied,[36] but charter

[32] Crawshaw v. City of Roxbury, 7 Gray (Mass.) 374.

[33] Hawk v. Marion Co., 48 Iowa 472, 474.

[34] Patton v. Stephens, 14 Bush (Ky.) 324. But it is evident that, whether the offer is antecedent or subsequent to the commission of the offense, the service to be paid for is equally within the province of the state in administering its criminal laws.

[35] Borough of York v. Forscht, 23 Pa. St. 391, 393.

[36] Gale v. Inhabitants &c., 51 Maine 174. "We have been unable to find any case overturning the case of Gale v. [Inhabitants of]

provisions are strictly construed so as to exclude it. Thus, an article in the charter of the city of Covington providing that "the council shall have power to pass any needful by-laws and ordinances for the due and effectual administration of right and justice. * * * They may legislate upon all subjects which the good government of said city shall require, unless restrained by the terms of the charter or constitution of the state, notwithstanding the legislature may have enacted laws relating to the same," confers no authority to offer a reward for the arrest of the city treasurer, who had been indicted for forgery and for the embezzlement of the funds of the city.[37] "It is not a matter in which the local public have an exclusive or peculiar interest," said the court, "as distinguished from the general public. The offender when arrested must be tried under the laws of the state by the judiciary of the state. * * * No power can be implied in favor of a corporation which does not pertain to matters of a local character, matters which peculiarly concern the local public, and without which those local affairs committed by the state to the corporation can not be properly attended to."[38]

§ 687. The same subject continued—The foregoing rule qualified. —Where it was provided by statute that counties "may acquire and hold property and make all contracts necessary or expedient for the management, control and improvement of the same," it was conceded that the county had no power to offer a reward for the arrest of persons charged with the commission of crime, but held that the board of supervisors might offer a reward for the recovery of money which had been stolen from the county. "Of necessity it seems to us that this power must exist," said the court; "otherwise, when a county treasury is robbed, the county authorities must fold their hands and remain passive until the thief repents and voluntarily returns the

South Berwick:" Baker v. City of Washington, 7 D. C. 134, 140; Hawk v. Marion Co., 48 Iowa 472; Board &c. v. Bradford, 72 Ind. 455; s. c. 37 Am. R. 174; Hight v. Board &c., 68 Ind. 575; Board &c. v. Ward, 69 Ind. 441. See also, Lee v. Trustees &c., 7 Dana (Ky.) 28.

[37] Patton v. Stephens, 14 Bush (Ky.) 324.

[38] Patton v. Stephens, 14 Bush (Ky.) 324, 328. If the power be doubtful the court should decide against it: Hanger v. City of Des Moines, 52 Iowa 193; s. c. 2 N. W. 1105; 35 Am. R. 266 (the charter gave the common council power by a two-thirds vote to offer rewards. It was held that even assuming that there was an implied power, it could not be exercised except in the manner pointed out); Loveland v. City of Detroit, 41 Mich. 367; s. c. 1 N. W. 952. See also, Stamp v. Cass Co., 47 Mich. 330; s. c. 11 N. W. 183. Whether a reward might not be binding if it related merely to offenses against municipal ordinances, quære: Murphy v. City of Jacksonville, 18 Fla. 318.

money, or rely on the exertions of the individual citizen to work and labor for the recovery of the money without hope of pay or pecuniary reward. If the latter discovered the money under such circumstances, the temptation to divide with the thief instead of the county would be great."[39]

§ 688. **Expenditures in obtaining or opposing legislation.**—The supreme court of Connecticut decided that a town has the power to employ and pay counsel to oppose before the general assembly a petition to divide its territory, made by certain individuals seeking to promote their own interests, and not by the state from motives of policy. The chief justice dissented, and the majority opinion concedes that the conclusion of the court is in conflict with the views expressed in Maine and Massachusetts.[40] In the latter state it was held that a town has no implied authority to incur expense in opposing before the legislature a proposition to annex it to another town.[41] The same court had previously denied the validity

[39] Hawk v. Marion Co., 48 Iowa 472, 475, holding also that if only a part of the stolen money is recovered the party through whose agency the recovery has been effected is entitled to a pro-rata share of the reward. Under the revised statutes of Illinois, ch. 60, § 15, providing that county boards may offer rewards for the arrest and conviction of any person guilty of stealing "any horse, mare," etc., "or any other property exceeding $50 in value," the limitation as to value applies only to property other than that specified: Butler v. McLean Co., 32 Ill. App. 397. When the offer of a reward is authorized, an officer can not recover it if his services are only in the line of his duty: Pool v. City of Boston, 5 Cush. (Mass.) 219; Stamper v. Temple, 6 Humph. (Tenn.) 113; Kick v. Merry, 23 Mo. 72; Day v. Putnam Ins. Co., 16 Minn. 408; Warner v. Grace, 14 Minn. 487; Gillmore v. Lewis, 12 Ohio 281; Means v. Hendershott, 24 Iowa 78; Thornton v. Missouri Pac. R. Co., 42 Mo. App. 58. See also, Morris v. Kasling, 79 Tex. 141; s. c. 15 S. W. 226.

[40] Farrel v. Town of Derby, 58 Conn. 234; s. c. 20 Atl. 460; 34 Am. & Eng. Corp. Cas. 391. "Had the state of its own motion, by reasons of public policy, taken steps to change the boundaries of the town or abolish it altogether, the case presented would have been a very different one; but the attack was not made by the state from motives of policy, and in the interest of good government, but was made by certain parties who sought thereby to promote their own interests. The attack was not directed alone against other individuals who differed from them but against the town as well. The end sought involved not only a dismemberment of the town in respect to territory and population, but also a division of its corporate property, a reduction of its grand list, an apportionment of its debts, liabilities and burdens as to highways, bridges, paupers and the like."

[41] Coolidge v. Inhabitants &c., 114 Mass. 592; Minot v. Inhabitants &c., 112 Mass. 1; s. c. 17 Am. R. 52 (where it was held that a town could not legally appropriate money

of a contract to pay for services of "lobby members" in procuring the passage of a charter of incorporation.[42] In Maine, also, a town can not legally raise and expend money either for services of members of the "third house" in opposing a division of the town,[43] or of attorneys who appear before a committee for the same purpose.[44] A city has no authority to appropriate money to obtain legislative permission to build a bridge across a navigable river,[45] or to procure the passage of an unconstitutional act.[46] The power granted in a charter "to provide for supplying the city with water," by implication gives the city power to agree upon water rates.[47] Power to light streets includes power to buy or build a plant for that purpose.[48] There is no implied power to provide for a pyrotechnic display on the Fourth of July.[49]

(b) Eminent Domain.

§ 689. Nature and definition.—The right of eminent domain has been defined to be "that superior right of property pertaining to the sovereignty by which the private property acquired by its citizens under its protection may be taken or its use controlled for the public benefit without regard to the wishes of its owners. More accurately it is the rightful authority which exists in every sovereignty to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, necessity, convenience or

to pay for the expenses of a committee directed by vote to petition the legislature for annexation to another town). But under a statute authorizing the employment of counsel by "any town interested in a petition to the legislature" to represent it at hearings thereon, a town may employ and pay counsel to oppose its division before a committee of the legislature: Connolly v. Inhabitants &c., 151 Mass. 437; s. c. 24 N. E. 404.

[42] Frost v. Inhabitants &c., 6 Allen (Mass.) 152, on the ground that secret attempts to secure votes, etc., are not a legal consideration.

[43] Frankfort v. Inhabitants &c., 54 Maine 250.

[44] Inhabitants &c. v. Inhabitants &c., 63 Maine 231.

[45] Henderson &c. v. City of Covington, 14 Bush (Ky.) 312.

[46] Mead v. Inhabitants &c., 139 Mass. 341; s. c. 1 N. E. 413; 8 Am. & Eng. Corp. Cas. 545. In Bachelder v. Epping, 28 N. H. 354, the plaintiff recovered for services as a member of a committee appointed to apply to the legislature to have a term of court holden annually in the defendant town.

[47] Los Angeles &c. Co. v. City of Los Angeles, 88 Fed. 720; Santa Ana Water Co. v. Town of San Buenaventura, 56 Fed. 339; Illinois Trust &c. Bank v. City of Arkansas City, 76 Fed. 271; s. c. 22 C. C. A. 171.

[48] Hay v. City of Springfield, 64 Ill. App. 671.

[49] Love v. City of Raleigh, 116 N. C. 296; s. c. 21 S. E. 503.

welfare may demand."[50] It is a necessary and inherent attribute of sovereignty in the state, which does not depend upon constitutional provisions for its existence.[51] All grants of property by the state are subject to the implied condition that it may be resumed by an exercise of the right of eminent domain, and a contract renouncing this power is not covered by the constitution of the United States prohibiting legislation that impairs the obligation of contracts.[52]

§ 690. The same subject continued—Constitutional limitations.—The provision in the constitution of the United States that private property shall not be taken for public use without just compensation is a restriction only upon the power of the federal government and not a limitation of the power of the states.[53] But this provision is

[50] Cooley Const. Lim. 640; citing Vattel, ch. 20, § 34; Bynkershoek, lib. 2, ch. 15; Angell Watercourses, § 457; 2 Kent Com. 338-340; Redfield Railways, ch. 11, § 1; Waples Proceedings in Rem, § 242; Pollard's Lessee v. Hagan, 3 How. 212; Beekman v. Saratoga &c. R. Co., 3 Paige (N. Y.) 45.

[51] Harvey v. Thomas, 10 Watts (Pa.) 63; Noll v. Dubuque &c. R. Co., 32 Iowa 66; Raleigh &c. R. Co. v. Davis, 2 Dev. & B. L. (N. C.) 451; Brown v. Beatty, 34 Miss. 227; United States v. Jones, 109 U. S. 513; s. c. 3 S. Ct. 346; People v. Mayor &c., 32 Barb. (N. Y.) 102; Lewis Eminent Domain, ch. 1. The right which is denominated the eminent domain is distinguished from the police power, in that the former is a taking of property and the latter a regulation of the use of it: Philadelphia v. Scott, 81 Pa. St. 80; King v. Davenport, 98 Ill. 305; Bass v. State, 34 La. An. 494; Hine v. City of New Haven, 40 Conn. 478; Inhabitants &c. v. Mayo, 109 Mass. 315; People v. Hawley, 3 Mich. 330; Vanderbilt v. Adams, 7 Cowen (N. Y.) 349. It is also distinct from the common-law right to destroy property to prevent a public calamity, such as the spread of fire or ravages of pestilence: Russell v. Mayor &c., 2 Denio (N. Y.) 461; American Print Works v. Lawrence, 21 N. J. L. 248; Field v. City of Des Moines, 39 Iowa 575. And from taxation: People v. Mayor &c., 4 N. Y. 419, where the two rights are contrasted. And from assessments for local improvements: Nichols v. City of Bridgeport, 23 Conn. 189; State v. Blake, 36 N. J. L. 442; Chambers v. Saterlee, 40 Cal. 497; Matter of Dorrance Street, 4 R. I. 230. And from the war power: Lewis Eminent Domain, § 8 and cases there cited.

[52] Cooley Const. Lim. 339, where the author says that if such an agreement were held to be valid the only effect would be to require that compensation be made for its violation.

[53] Barron v. Mayor &c., 7 Peters 243; Pumpelly v. Green Bay Co., 13 Wall. 166; Cairo &c. R. Co. v. Turner, 31 Ark. 494; Johnson v. Rankin, 70 N. C. 550; Withers v. Buckley, 20 How. 84; Martin v. Dix, 52 Miss. 53; Young v. McKenzie, 3 Ga. 31. But to constitute "due process of law" within the meaning of the fourteenth amendment it is believed that the decided cases "require compensation, notice and procedure con-

now a part of the organic law of every state except North Carolina.[54]

§ 691. **What property may be taken.**—"Every species of property which the public need may require and which government can not lawfully appropriate under any other right is subject to be seized and appropriated under the right of eminent domain."[55] Land, timber, stone and gravel with which to make or improve the public highways,[56] streams of water,[57] a prescriptive right to pollute a watercourse,[58] a right to use the water of a stream for irrigation,[59] and all corporate property and corporate franchises.[60]

formable to law:" Elliott Roads & Streets (2d ed.), § 183; Scott v. City of Toledo, 36 Fed. 385. As to the constitutional guaranty of trial by jury, see § 715, post.

[54] The constitutional provisions in the different states are given in extenso in Lewis Eminent Domain, 27, n. Previous to the adoption of these limitations it was held in many jurisdictions that the property of the citizen was secured from seizure without compensation by fundamental principles of natural justice which were supposed to inhere in the constitution: Harness v. Chesapeake &c. Canal Co., 1 Md. Ch. 248; Bradshaw v. Rogers, 20 Johns. (N. Y.) 103. But this opinion was not universal and is opposed to the later cases and the views of standard authors: Winona &c. R. Co. v. Waldron, 11 Minn. 515; Harvey v. Thomas, 10 Watts (Pa.) 63; Lewis Eminent Domain, § 10; Cooley Const. Lim. 81.

[55] Cooley Const. Lim. (6th ed.) 646; Elliott Roads & Streets (2d ed.), §§ 213 et seq., 223; Lewis Eminent Domain, § 262.

[56] Wheelock v. Young, 4 Wend. (N. Y.) 647; Bliss v. Hosmer, 15 Ohio 44; Watkins v. Walker Co., 18 Tex. 585; Arnold v. Hudson River R. Co., 55 N. Y. 661; Lyon v. Jerome, 15 Wend. (N. Y.) 569; Jerome v. Ross, 7 Johns. Ch. (N. Y.) 315. Buildings may be removed or destroyed to make way for public improvements, and a dwelling-house is no more exempt than any other species of property: Wells v. Somerset &c. R. Co., 47 Maine 345. Nor a pier: Matter of Union Ferry, 98 N. Y. 139. Toll-bridges, turnpikes and ferries may be taken: Northampton Bridge Case, 116 Mass. 442; In re Towanda Bridge Co., 91 Pa. St. 216; Armington v. Town of Barnett, 15 Vt. 745; Sullivan v. Board &c., 58 Miss. 790.

[57] Gardner v. Trustees &c., 2 Johns. Ch. (N. Y.) 162; Reusch v. Chicago &c. R. Co., 57 Iowa 687; s. c. 11 N. W. 647.

[58] And this without taking the land along it: Martin v. Gleason, 139 Mass. 183; s. c. 29 N. E. 664.

[59] And this may be separated from the land in connection with which it ripened: Strickler v. City of Colorado Springs, 16 Colo. 61; s. c. 26 Pac. 313.

[60] West River Bridge Co. v. Dix, 6 How. 507; Central Bridge Corp. v. City of Lowell, 4 Gray (Mass.) 474; In re Twenty-second street, 15 Phila. (Pa.) 409; Proprietors &c. v. New Hampshire Bridge, 7 N. H. 35; Commonwealth v. Pennsylvania Canal Co., 66 Pa. St. 41; s. c. 5 Am. R. 329. Cf. Central City Horse R. Co. v. Fort Clark Horse R. Co., 81 Ill. 523.

§ **692. Quantity of estate.**—It is competent for the legislature to determine the extent of the estate which shall be taken for public use.[61] It may authorize the condemnation of the absolute fee-simple[62] and if the public necessity for which authority to appropriate land is given be of a permanent nature, the legislative intent to seize the fee may be implied.[63] But ordinarily express authority is required to deprive the owner of the fee,[64] and statutes will be strictly construed so as to limit the estate taken to an easement if possible.[65]

[61] It is the exclusive judge: Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; Wyoming Coal Co. v. Price, 81 Pa. St. 156; United States v. Harris, 1 Sumner 21. Cf. Jackson v. Rutland &c. R. Co., 25 Vt. 150; Barclay v. Howell's Lessees, 6 Peters 498. But the power to decide may be delegated: Powers' Appeal, 29 Mich. 504; Rensselaer &c. R. Co. v. Davis, 43 N. Y. 137; Embury v. Conner, 3 N. Y. 511; In re Commissioners of Public Works, 10 N. Y. S. 705.

[62] Haldeman v. Pennsylvania R. Co., 50 Pa. St. 425; Ferree v. School Dist., 76 Pa. St. 376; Bachler's Appeal, 90 Pa. St. 207; Heywood v. Mayor &c., 7 N. Y. 314; Washington Cemetery v. Prospect Park &c. R. Co., 68 N. Y. 591; In re City of Buffalo, 64 N. Y. 547; Water-Works Co. v. Burkhart, 41 Ind. 364; Canal &c. Co. v. Commissioners &c., 26 La. An. 740; Elliott Roads & Streets (2d ed.), § 224. In such a case the weight of authority is that there is no reverter upon a cessation of public use: Malone v. City of Toledo, 28 Ohio St. 643; Heard v. City of Brooklyn, 60 N. Y. 242; Heath v. Barmore, 50 N. Y. 302; 2 Dillon Munic. Corp., § 589. An act authorizing the taking, on the express ground of expediency, of more land than was necessary for the purpose specified, was held unconstitutional in Embury v. Conner, 3 N. Y. 511.

[63] Holt v. City Council &c., 127 Mass. 408 (case of a public park); De Varaigne v. Fox, 2 Blatchf. 95 (an almshouse). See also, Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; Tifft v. City of Buffalo, 82 N. Y. 204. A statute entitled "to enable" a city "to abate a nuisance and for the preservation of the public health" authorized the city "to purchase or otherwise take the lands" within a large district, provide for payment to the owners for damages, and directed the city "to raise the grade of the territory so taken or purchased with reference to a complete drainage thereof so as to abate the present nuisance and to preserve the health of the city." It was held that the fee of lands taken under this act vested in the city as absolute owner, and that the statute was not unconstitutional either as an attempt to exercise judicial power or as authorizing the taking of a greater interest than was necessary: Dingley v. City of Boston, 100 Mass. 544.

[64] Clark v. Worcester, 125 Mass. 226; Board v. Beckwith, 10 Kan. 603.

[65] Kellogg v. Malin, 50 Mo. 496; United States v. Harris, 1 Sumner 21; In re Commissioners of Public Works, 10 N. Y. S. 705; Quimby v. Vermont &c. R. Co., 23 Vt. 387; Washington Cemetery v. Prospect Park &c. R. Co., 68 N. Y. 591. Cf. Page v. O'Toole, 144 Mass. 303; s. c. 10 N. E. 851; Edgerton v. Huff, 26 Ind. 35; City of Logansport v. Shirk, 88 Ind. 563. Where an easement only is taken the owner retains the right to enjoy the property so far as it is susceptible of use without

§ 693. What constitutes a taking.—It was formerly held in substance that to constitute a taking within the meaning of the constitution there must be an actual physical appropriation of the property, or a divesting of title.[66] But the later authorities, by adopting a more liberal construction of the term "property,"[67] include all the rights which pertain to the ownership of things real and personal.[68]

§ 694. The same subject continued—The leading case.—The leading case wherein the later doctrine is expounded is Eaton v. Boston &c. R. Co.,[69] decided by the supreme court of New Hampshire in 1872. A railroad corporation constructed its road across Eaton's farm. Damages were assessed under the statute and paid to Eaton, who released the corporation from damages on account of the laying out of the road over his land. Northerly of the farm there was a ridge of land completely protecting the farm from the effect of floods and freshets in a neighboring river. Through this ridge the corporation, in constructing its road, made a deep cut, and the waters of the river in times of flood carried sand, gravel and stones upon Eaton's land.

interfering with the paramount right of the public: Village of Brooklyn v. Smith, 104 Ill. 429; Goodtitle v. Alker, 1 Burr. 133; Elliott Roads & Streets (2d ed.), § 230, and cases cited.

[66] Sedgwick Const. Law (2d ed.) 456–458; Lewis Eminent Domain, § 57.

[67] "The earlier cases as to what constitutes a taking were based upon a radically defective interpretation of the constitution, which not only denied the right to compensation in many cases where it ought to be given, but greatly embarrassed the property-owner in obtaining it in those cases in which it was conceded to be due. These early cases attacked the question wrong end first, so to speak, through the word 'taken' instead of through the word 'property.' It is only by having a clear and correct conception of the idea of property that a uniform, consistent and just application of the constitution can be made to the many complicated and varied cases which come up for adjudication:" Preface to Lewis Eminent Domain, p. 1.

[68] Arnold v. Hudson River R. Co., 55 N. Y. 661; Eaton v. Boston &c. R. Co., 51 N. H. 504; Thompson v. Androscoggin River Imp. Co., 54 N. H. 545; Smith v. City of Rochester, 92 N. Y. 463; Matter of Hamilton Avenue, 14 Barb. (N. Y.) 405. But the damage must be of such a nature as to give a cause of action on common-law principles. A jail may be obnoxious to those who live or do business near it, but the special damage in such case is incidental to what the general interest of the community requires and becomes damnum absque injuria: Burwell v. Board &c., 93 N. C. 73; Wehn v. Commissioners &c., 5 Neb. 494. Disturbing the right to lateral support of land is a taking: O'Brien v. City of St. Paul, 25 Minn. 331; Buskirk v. Strickland, 47 Mich. 389; s. c. 11 N. W. 210; Richardson v. Vermont &c. R. Co., 25 Vt. 465. So, too, depriving the owner of the use of a non-navigable stream: Smith v. City of Rochester, 92 N. Y. 463; Yates v. Milwaukee, 10 Wall. 497.

[69] 51 N. H. 504; s. c. 12 Am. R. 147.

It was held that, even if the corporation had constructed the road with due care and prudence, Eaton could recover the damage caused him by cutting away the ridge. The court said: "The constitutional prohibition (which exists in most, or all, of the states) has received in some quarters a construction which renders it of comparatively little worth, being interpreted much as if it read: 'No person shall be divested of the formal title to property without compensation, but he may, without compensation, be deprived of all that makes the title valuable.' * * * In a strict sense, land is not 'property,' but the subject of property. The term 'property,' although in common parlance frequently applied to a tract of land or a chattel, in its legal signification 'means only the right * * * over a determinate thing.' 'Property is the right of any person to possess, use, enjoy and dispose of a thing.'[70] If property in land consists in certain essential rights, and a physical interference with the land substantially subverts one of those rights, such interference 'takes' pro tanto the owner's 'property.' The right of indefinite user (of using indefinitely) is an essential quality or attribute of absolute property, without which absolute property can have no legal existence. This right of user necessarily includes the right and power of excluding others from using the land. From the very nature of these rights of user and of exclusion, it is evident that they can not be materially abridged without ipso facto taking the owner's 'property.' If the right of indefinite user is an essential element of absolute property or complete ownership, whatever physical interference annuls this right takes 'property'—although the owner may still have left to him valuable rights (in the article) of a more limited and circumscribed nature. He has not the same property that he formerly had. His absolute ownership has been reduced to a qualified ownership. * * * If the claim set up by the defendants in this case is well founded, an easement is already vested in them. An easement is property, and is within the protection of the constitutional prohibition now under consideration. If the defendants have acquired this easement, it can not be taken from them, even for public use, without compensation. But the right acquired by the defendants is subtracted from the plaintiff's ownership of the land. Whatever interest the defendants have acquired in this respect the plaintiff has lost. If what they have gained is property, then what he has lost is property."[71]

[70] Citing Selden, J., in Wynehamer v. People, 13 N. Y. 378, 433; 1 Bl. Com. 138; 2 Austin Jurisprudence (3d ed.) 817, 818.

[71] Eaton v. Boston &c. R. Co., 51 N. H. 504, 511, 515; s. c. 12 Am. R. 147. This case was approved in Thompson v. Androscoggin River Imp. Co., 54 N. H. 545. See also, Grand Rapids Booming Co. v. Jarvis, 30 Mich.

§ 695. The same subject continued—Constitutional amendments.—The narrow construction placed by some of the courts upon the words "property" and "taken" caused the amendment of the constitutions of many of the states so that *damage* to private property taken for public use should be compensated.[72] Judge Dillon sums up the effect of these amendments as follows: "It may perhaps be premature to affirm that the meaning of the word 'damaged,' as used in the recent constitutional amendments, is absolutely confined to cases where the common law would have given a remedy for injuries to property or property-rights, if the legislative authority to do the act which caused the damage had not, aside from such constitutional amendment, deprived, or been previously construed to deprive, the owner of his right to compensation therefor; and yet such is, in our judgment, its main, if not exclusive, purpose and effect."[73]

§ 696. Property already appropriated to public use.—It is a well-established rule that property already appropriated in the proper exercise of the power of eminent domain can not be taken for another public use which will wholly defeat or supersede the former use, unless the power to make such second appropriation be given expressly or by necessary implication.[74] A further exposition of the rule was

308; Lewis Eminent Domain, ch. 3; Elliott Roads & Streets (2d ed.), ch. 8; Cooley Const. Lim. (6th ed.) 666 et seq.; Dillon Munic. Corp., § 587b.

[72] Such amendments have been adopted in the following states and construed in the cases cited:—*Alabama:* City Council &c. v. Townsend, 84 Ala. 478; s. c. 40 So. 780. *Arkansas:* Hot Springs R. Co. v. Williamson, 45 Ark. 429. *California:* Reardon v. City of San Francisco, 66 Cal. 492; s. c. 6 Pac. 317. *Colorado:* Mollandin v. Union Pac. R. Co., 14 Fed. 394. *Georgia:* City of Atlanta v. Green, 67 Ga. 386. *Illinois:* Rigney v. City of Chicago, 102 Ill. 64; Chicago v. Taylor, 125 U. S. 161; s. c. 8 S. Ct. 820; City of Chicago v. Union Bldg. Ass'n, 102 Ill. 379; s. c. 40 Am. R. 598; City of Olney v. Wharf, 115 Ill. 519; s. c. 5 N. E. 366. *Missouri:* McElroy v. Kansas City, 21 Fed. 257; Sheehy v. Kansas City &c. R. Co., 94 Mo. 574; s. c. 7 S. W. 579. *Nebraska:* Schaller v. City of Omaha, 23 Neb. 325; s. c. 36 N. W. 533. *Pennsylvania:* Hendrick's Appeal, 103 Pa. St. 358; Chester Co. v. Brower, 117 Pa. St. 647; s. c. 12 Atl. 577; O'Brien v. Pennsylvania &c. R. Co., 119 Pa. St. 184; s. c. 13 Atl. 74; Pennsylvania R. Co. v. Marchant, 119 Pa. St. 541; s. c. 13 Atl. 690. *Texas:* Bounds v. Kirven, 63 Tex. 159. *West Virginia:* Hutchinson v. City of Parkersburg, 25 W. Va. 226.

[73] Dillon Munic. Corp. (4th. ed.), § 587.

[74] Little Miami &c. R. Co. v. City of Dayton, 23 Ohio St. 510; Railroad Co. v. Village of Belle Centre, 48 Ohio St. 273; s. c. 27 N. E. 464. "It is settled beyond controversy that land already appropriated to a public use can not be appropriated to another public use unless the statute clearly confers authority to make a second seizure:" City of Seymour v. Jeffersonville &c. R. Co., 126 Ind. 466; s. c. 26 N. E. 188; cit-

given by Folger, J., of the court of appeals of New York, as follows: "An implication is an inference of something not directly declared, but arising from what is admitted or expressed. * * * In determining whether a power generally given is meant to have operation upon lands already devoted by legislative authority to a public purpose, it is proper to consider the nature of the prior public work, the public use to which it is applied, the extent to which that use would be impaired or diminished by the taking of such part of the land as may be demanded for the subsequent public use. If both uses may not stand together, with some tolerable interference which may be compensated for by damages paid; if the latter use, when exercised, must supersede the former,—it is not to be implied from a general power given, without having in view a then existing and particular need therefor, that the legislature meant to subject lands devoted to a public use already in exercise to one which might thereafter arise. A legislative intent that there should be such an effect will not be inferred from a gift of power made in general terms. To defeat the attainment of an important public purpose to which lands have already been subjected the legislative intent must unequivocally appear. If an implication is to be relied upon, it must appear from the face of the enactment, or from the application of it to the particular subject-matter of it, so that by reasonable intendment some especial object sought to be attained by the exercise of the power granted could not be reached in any other place or manner."[75]

§ 697. **The same subject continued.**—Ordinarily a highway or railroad can not be laid out longitudinally over a previously established railroad or highway by virtue of general statutory powers or without special authority from the legislature.[76] On the other hand, in the absence of special regulations and by virtue of a general authority to lay out such roads, necessary crossings can be made.[77] It was held

ing Lake Shore &c. R. Co. v. Cincinnati &c. R. Co., 116 Ind. 578; s. c. 19 N. E. 440; Baltimore &c. R. Co. v. North, 103 Ind. 486; s. c. 3 N. E. 144; McDonald v. Payne, 114 Ind. 359; s. c. 16 N. E. 795; Elliott Roads & Streets (1st ed.) 167, notes 2 and 4 (see 2d ed., §§ 218, 219).

[75] In re City of Buffalo, 68 N. Y. 167. It was held in that case that under a general power a city could not excavate a canal across several railroad-tracks and a railroad-yard where there were numerous tracks, turn-outs and switches. See also, In re Boston &c. R. Co., 53 N. Y. 574.

[76] West Boston Bridge Co. v. County Com'rs, 10 Pick. (Mass.) 270, 272; Inhabitants &c. v. Connecticut River R. Co., 4 Cush. (Mass.) 63, 71; Boston &c. R. Co. v. Lowell &c. R. Co., 124 Mass. 368, 371.

[77] St. Paul &c. R. Co. v. City of Minneapolis, 35 Minn. 141; s. c. 27 N. W. 500; State v. Easton R. Co., 36 N. J. L. 181; Tuckahoe Canal v. Tuckahoe &c. R. Co., 11 Leigh (Va.) 42. Express authority to cross rail-

that under a general authority county commissioners might take a strip of land from a schoolhouse lot for a needed town way, where the use of the lot for school purposes, though considerably impaired, would not be wholly prevented.[78] There are cases in which it would seem that lands used for a burying-ground have been taken by the municipal authorities for highway purposes, but whether they were taken under a general or special authority does not appear.[79] In Connecticut it was held that land already in use as a cemetery could not be taken for a highway without clear legislative authority.[80]

§ 698. **Change of grade.**—At common law a municipal corporation is not liable for injuries resulting from changing the grade of a highway.[81] But a recovery may be had for injuries which result from the negligent manner in which the work is performed.[82] And in many states there are statutory or constitutional provisions giving a right of action for a substantial injury without regard to negligence.[83]

road-tracks does not extend to land used for depot purposes: Prospect Park &c. R. Co. v. Williamson, 91 N. Y. 552; Albany &c. R. Co. v. Brownell, 24 N. Y. 345.

[78] Inhabitants &c. v. County Com'rs, 154 Mass. 424; s. c. 28 N. E. 298. Authority to take land for another public use may rest on necessary implication: In re Application of Mayor &c., 135 N. Y. 253; s. c. 31 N. E. 1043; N. Y. Law Jour., Oct. 27, 1892.

[79] In the matter of Albany Street, 11 Wend. (N. Y.) 149; In the matter of Beekman Street, 20 Johns. (N. Y.) 269.

[80] Evergreen Cemetery Ass'n v. City of New Haven, 43 Conn. 234.

[81] Simmons v. City of Camden, 26 Ark. 276; s. c. 7 Am. R. 620; Burr v. Inhabitants &c., 121 Mass. 241; Snow v. Inhabitants &c., 109 Mass. 123; Brown v. City of Lowell, 8 Met. (Mass.) 172; Callender v. Marsh, 1 Pick. (Mass.) 418; Alden v. City of Minneapolis, 24 Minn. 254, 257; Lee v. City of Minneapolis, 22 Minn. 13; Shaw v. Crocker, 42 Cal. 435; Fellowes v. City of New Haven, 44 Conn. 240; s. c. 26 Am. R. 447; Dorman v. City of Jacksonville, 13 Fla. 538; Fuller v. City of Atlanta, 66 Ga. 80; Thomson v. Mayor &c., 61 Mo. 282; Nebraska City v. Lampkin, 6 Neb. 27; Hendershott v. City of Ottumwa, 46 Iowa 658; Nevins v. City of Peoria, 41 Ill. 502; City of Terre Haute v. Turner, 36 Ind. 522; Keasy v. City of Louisville, 4 Dana (Ky.) 154; Hovey v. Mayo, 43 Maine 322; Tyson v. City of Milwaukee, 50 Wis. 78; s. c. 5 N. W. 914; Transportation Co. v. Chicago, 99 U. S. 635; People v. Green, 64 N. Y. 606; Pusey v. City of Allegheny, 98 Pa. St. 522; Humes v. Mayor &c., 1 Humph. (Tenn.) 403. In Ohio the rule is different: Keating v. Cincinnati, 38 Ohio St. 141; Rhodes v. City of Cleveland, 10 Ohio 159; Dodson v. City of Cincinnati, 34 Ohio St. 276.

[82] Dorman v. City of Jacksonville, 13 Fla. 538; City of Aurora v. Reed, 57 Ill. 29; Cotes v. City of Davenport, 9 Iowa 227; Elliott Roads & Streets (2d ed.), §§ 463, 483.

[83] Dalzell v. City of Davenport, 12 Iowa 437; City of Columbus v. Hydraulic Woollen Mills Co., 33 Ind. 435; Burr v. Inhabitants &c., 121 Mass. 241; Hurford v. City of Omaha, 4 Neb. 336; Crossett v. City of

§ 699. Change of use—Additional use.—It is clear that where the owner of the property condemned retains the fee, he is entitled to additional compensation in a new proceeding, if an additional burden is cast upon the land.[84] "It is difficult to determine what shall be considered an additional burden, entitling the owner of the fee to the protection of the constitutional provision limiting the right of eminent domain. If the new use is radically distinct and different from the former, there must be a new assessment of compensation; and the decided weight of authority is that constructing an ordinary commercial railroad on a street or road is a change of use entitling the owner of the soil to compensation."[85] But where the use is not

Janesville, 28 Wis. 420. "A case of this character does not stand upon the common law, and, therefore, is not within the rule that an action will lie where there is an invasion of a right, although no substantial injury is shown; for it is of the essence of the statutory right that it should affirmatively appear that the complaining property-owner has sustained substantial damages:" Elliott Roads & Streets (2d ed.), § 487, and cases cited.

[84] "The soil can not be devoted to a different use, whether more or less onerous, without a new condemnation and compensation paid:" Lewis Eminent Domain, § 140.

[85] Elliott Roads & Streets (2d ed.), § 207, where the authorities on both sides are collected, and the prevailing rule vindicated by the authors. Part of a highway can not be used for a market-house without compensation to the owner of the fee. "Land taken and applied for the ordinary purposes of a street would often be an improvement of the adjacent property; an appropriation of it to the uses of a market would, perhaps, as often be destructive of one-half of the value of such property:" State v. Laverack, 34 N. J. L. 201, 205. See also, Lutterloh v. Mayor &c., 15 Fla. 306; State v. Mayor &c., 5 Port. (Ala.) 279; Mayor &c. v. Wilson, 49 Ga. 476. So with a ferry-landing upon a highway: Prosser v. Davis, 18 Iowa 367; Chambers v. Furry, 1 Yeates (Pa.) 167; Haight v. Keokuk, 4 Iowa 199; Chess v. Manown, 3 Watts (Pa.) 219. Cf. Hudson v. Cuero Land &c. Co., 47 Tex. 56. And generally where telegraph- or telephone-lines are put up on the highway. But the question of damage is one of fact: Lewis Eminent Domain, § 131. In Julia Bldg. Ass'n v. Bell Tel. Co., 88 Mo. 258, and Pierce v. Drew, 136 Mass. 75 (two judges dissenting), it is held that the erection of telegraph- and telephone-poles is not an additional servitude. And in Consumers' Gas &c. Co. v. Congress Spring Co., 15 N. Y. S. 624, it is held that poles and wires for electric lights are merely ancillary to the original use, but that special and peculiar circumstances might give a right to compensation. For cases holding that the use of a highway for a telegraph-line will entitle the abutting owner to additional compensation, see Dusenbury v. Mutual Tel. Co., 11 Abb. N. C. (N. Y.) 440; Atlantic &c. Tel. Co. v. Chicago &c. R. Co., 6 Biss. 158; Board &c. v. Barnett, 107 Ill. 507; Elliott Roads & Streets (2d ed.), §§ 705, 706. As to elevated railroads, it was held by a majority of the justices of the New York court of appeals that an abutting owner, even if he does not own the

essentially changed there is no new taking in the constitutional sense.[86]

§ 700. **The same subject continued—Electric railways.**—The question whether electric railways shall be placed in the same category as horse-railroads or in that of steam-railroads has been earnestly debated in several cases. So far as the bare weight of authority can silence contention, it must be declared that a change in the motive power from horses to electricity, applied by means of the overhead-wire system, is not a radical and substantial departure in the occupancy of the highway and does not constitute a new and additional burden. This is the law in Pennsylvania,[87] New Jersey,[88] Michigan,[89] and

fee of any part of the street, has such a property as to be entitled to additional compensation: Story v. New York &c. R. Co., 90 N. Y. 122. That the city can not authorize the use of a street for a hack-stand as against an abutting owner, see McCaffrey v. Smith, 41 Hun (N. Y.) 117. In Attorney-General v. Metropolitan R. Co., 125 Mass. 515, and Lockhart v. Craig &c. R. Co., 139 Pa. St. 419, 422; s. c. 21 Atl. 26, a horse-railroad was held not to be a new servitude if the use of the highway be reasonable. To the same point, 2 Dillon Munic. Corp., § 722; Cincinnati &c. R. Co. v. Incorporated Village of Cumminsville, 14 Ohio St. 523; Detroit City R. Co. v. Mills, 85 Mich. 634, 654; s. c. 48 N. W. 1007, and cases there cited; Taggart v. Newport St. R. Co., 16 R. I. 668; s. c. 19 Atl. 326. While it is recognized that the proper and contemplated use of a highway is not to be deemed limited to such vehicles as are in use at the time, it is considered to be too great an extension to hold that it embraces its use for a steam-railway. At this point the line has been drawn by a great weight of judicial decision: Williams v. New York &c. R. Co., 16 N. Y. 97; Wager v. Troy Union R. Co., 25 N. Y. 526; Imlay v. Union Branch R. Co., 26 Conn. 249, 255; Sherman v. Milwaukee &c. R. Co., 40 Wis. 645; Kuchenman v. Chicago &c. R. Co., 46 Iowa 366; Kaiser v. St. Paul &c. R. Co., 22 Minn. 149; Southern Pac. R. Co. v. Reed, 41 Cal. 256.

[86] Changing a highway into a turnpike: Benedict v. Goit, 3 Barb. (N. Y.) 459; Carter v. Clark, 89 Ind. 238; Wright v. Carter, 27 N. J. L. 76. Contra, Cape Girardeau Road v. Renfroe, 58 Mo. 265. Use of city or village streets for sewers and drains, water-pipes, gas-pipes, steam and electricity: Lewis Eminent Domain, § 127 et seq. The same writer points out (§ 140) a distinction between cases where the public holds a qualified fee in lands and those were the fee is absolute. In the latter case a change of use gives no claim to compensation. "Thus lands taken for an asylum, jail or schoolhouse are usually held by a fee-simple absolute, while lands acquired for streets and public grounds, though held in fee, are nevertheless held in trust for the use specified."

[87] Lockhart v. Craig St. R. Co., 139 Pa. St. 419; s. c. 21 Atl. 26.

[88] Halsey v. Rapid Transit St. R. Co., 47 N. J. Eq. 380; s. c. 20 Atl. 859.

[89] Detroit City R. Co. v. Mills, 85 Mich. 634; s. c. 48 N. W. 1007. The same doctrine was announced by the Cuyahoga county, Ohio, court of common pleas in Pelton v. Railroad Co., 22 Week. Law Bul. 67.

Rhode Island.[90] In the Pennsylvania case the court said: "The proposed construction here is no more illegal by reason of its effects upon the owners of property, so far as actual interference with their rights to use the streets is concerned, than so many lamp-posts, and if compensation could not be compelled for the ground taken by them, neither should it be for the posts supporting the wires in this case."[91] And Grant, J., delivering the opinion in the Michigan case, said: "These poles used by the complainant [the railway company] are a necessary part of its system. When they do not interfere with the owner's access to and the use of his land, we see no reason why they should be held to constitute an additional servitude. Certainly they constitute no injury to his reversionary interest. To constitute an additional servitude, therefore, they must be an injury to the present use and enjoyment of his land. But they do not obstruct his light or his vision as do the structures of an elevated railroad. Neither they nor the cars they assist in moving cause the noise, steam, smoke and dirt which are produced by steam-cars. They do not interfere with his going and coming at his pleasure when placed as they can and must be so as to give him free access. Wherein then is he injured? If it be said that they are unsightly and therefore offend his taste, it can well be replied that they are no more so than the lamp-post or the electric tower. It is as necessary that rapid transit be furnished to a crowded city as it is that light should be furnished to its streets. Public convenience and necessity must control in all such cases."[92]

[90] Taggart v. Newport Street R. Co., 16 R. I. 668; s. c. 19 Atl. 326.

[91] Lockhart v. Craig St. R. Co., 139 Pa. St. 419, 425; s. c. 21 Atl. 26.

[92] Detroit City R. Co. v. Mills, 85 Mich. 634, 657; s. c. 48 N. W. 1007. But the scope of the decision was limited by the enunciation of the following general principles: — "1. The complainant can not lawfully construct and operate its road in a street too narrow to admit the passage of its cars and other vehicles at the same time, nor so construct it as to interfere with the rights of the general public in the street: Grand Rapids St. R. Co. v. West Side St. R. Co., 48 Mich. 433; s. c. 12 N. W. 643. 2. Nor in a street, though of sufficient width, if its condition be such that the operation of the railway will result in the practical exclusion of others from the use of the street. A railway so constructed and operated would be a public nuisance and the courts should abate it. 3. The complainant's road-bed and track must be built substantially with the level of the street so as to permit vehicles to cross without difficulty. 4. The poles must be so placed as not to interfere with the rights of ingress and egress to abutting property." And the doctrine seems also, to be confined to the use of city streets as distinguished from country roads. See s. c., pp. 653, 654, and Lockhart v. Craig St. R. Co., 139 Pa. St. 419, 424; s. c. 21 Atl. 26. In the opinion delivered in the Michigan case, Long, J., concurred, and Champlin, C. J., gave a qualified assent, but McGrath and Morse, JJ., entered an emphatic protest.

§ 701. Grant of power to municipal corporations.—The right of eminent domain is one which lies dormant in the state until legislative action is had pointing out the occasion, mode, conditions and agencies for its exercise.[93] The legislature may delegate authority to private or to municipal corporations to take property by eminent domain,[94] but the power must be given in express terms or by necessary implication.[95] Statutes conferring the right are to be strictly construed.[96] A provision that the common council may enforce ordinances "to construct and regulate sewers," etc., "and provide for the payment of the cost of constructing the same," does not confer the power to condemn property by eminent domain.[97] And power to open, extend or straighten streets and alleys does not authorize the condemnation of land for the purpose of widening a street.[98] It has been held, however, that power "to build and keep in repair county buildings, * * * and in case there are no public buildings, to provide suitable rooms for county purposes," gives the right to acquire land by eminent domain.[99] When the power is clear and the contemplated use in a particular case is public, the courts will not inquire into the necessity or propriety of the exercise of the right, or investigate the motives of the municipal authorities.[100]

[93] Dyckman v. Mayor &c., 5 N. Y. 434; Cooley Const. Lim. (6th ed.) 648; Allen v. Jones, 47 Ind. 438; Chicago &c. R. Co. v. Town of Lake, 71 Ill. 333. A strict compliance must be had with all the provisions of the law or the proceeding will be ineffectual: Cooley Const. Lim. (6th ed.) 649 and cases cited; Weckler v. City of Chicago, 61 Ill. 142; 2 Dillon Munic. Corp. (4th ed.), § 605.

[94] People v. Smith, 21 N. Y. 595; Commonwealth v. Inhabitants &c., 1 Pick. (Mass.) 180; 2 Dillon Munic. Corp. (4th ed.), § 602.

[95] Harwinton v. Catlin, 19 Conn. 520; Baldwin v. City of Bangor, 36 Maine 518; State v. Bishop, 39 N. J. L. 226; Gallup v. Woodstock, 29 Vt. 347. When the statute makes no provision for compensation the procedure can not be sustained: Chaffee's Appeal, 56 Mich. 244; s. c. 22 N. W. 871; In re Widening of Burnish St., 140 Pa. St. 531; s. c. 21 Atl. 500.

[96] Alexandria &c. R. Co. v. Alexandria &c. R. Co., 75 Va. 780; Washington Cemetery v. Prospect Park &c. R. Co., 68 N. Y. 591; Chamberlain v. Elizabethport Steam Cordage Co., 41 N. J. Eq. 43; s. c. 2 Atl. 775; Leeds v. City of Richmond, 102 Ind. 372; s. c. 1 N. E. 711.

[97] Allen v. Jones, 47 Ind. 438, 442.

[98] Chaffee's Appeal, 56 Mich. 244; s. c. 22 N. W. 871. See also, People v. Common Council &c., 50 N. Y. 525; City of East St. Louis v. St. John, 47 Ill. 463.

[99] Board &c. v. Gorrell, 20 Gratt. (Va.) 484.

[100] Dunham v. Village of Hyde Park, 75 Ill. 371 (unless, as the court intimated, the case shows manifest injustice, oppression and gross abuse of powers); Townsend v. Hoyle, 20 Conn. 1, 9; Kelsey v. King, 32 Barb. (N. Y.) 410; Stout v. Chosen Freeholders, 25 N. J. L. 202.

§ 702. Public use and necessity of appropriation, by whom determined.—"The question, What is a public use? is always one of law. Deference will be paid to the legislative judgment as expressed in enactments for an appropriation of property, but it will not be conclusive."[101] But the necessity and expediency of the exercise of the right of eminent domain is a political question, which is to be determined exclusively by the legislature.[102]

[101] Cooley Const. Lim. (6th ed.) 660; Olmstead v. Camp, 33 Conn. 532; Loughbridge v. Harris, 42 Ga. 500; Chicago &c. R. Co. v. Lake, 71 Ill. 333; Water-Works Co. v. Burkhart, 41 Ind. 364; Bankhead v. Brown, 25 Iowa 540; Scudder v. Trenton &c. Co., 1 N. J. Eq. 694; s. c. 23 Am. D. 756; Beekman v. Saratoga &c. R. Co., 3 Paige (N. Y.) 45; s. c. 22 Am. D. 679 and note; In re Deansville Cemetery Ass'n, 66 N. Y. 569; s. c. 23 Am. R. 86; In re Union Ferry Co., 98 N. Y. 139; In re Niagara Falls &c. R. Co., 108 N. Y. 375; s. c. 15 N. E. 429; Ryerson v. Brown, 35 Mich. 333; s. c. 24 Am. R. 564; In re St. Paul &c. R. Co., 34 Minn. 227; s. c. 25 N. W. 345; City of Savannah v. Hancock, 91 Mo. 54; s. c. 3 S. W. 215; McQuillen v. Hatton, 42 Ohio St. 202; Harding v. Goodlet, 3 Yerg. (Tenn.) 40; s. c. 24 Am. D. 546; Tyler v. Beacher, 44 Vt. 648.

[102] United States v. Harris, 1 Sumn. 21, 42; De Varaigne v. Fox, 2 Blatch. 95; Dingley v. City of Boston, 100 Mass. 544, 558; Haverhill Bridge Proprietors v. County Com'rs, 103 Mass. 120; s. c. 4 Am. R. 518; Hingham &c. Co. v. Norfolk Co., 6 Allen (Mass.) 353; Talbot v. Hudson, 16 Gray (Mass.) 417; In re Wellington, 16 Pick. (Mass.) 87; s. c. 26 Am. D. 631; In re Deansville Cemetery Ass'n, 66 N. Y. 569, 572; s. c. 23 Am. R. 86; Harris v. Thompson, 9 Barb. (N. Y.) 350; People v. Smith, 21 N. Y. 595; Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; Heyward v. Mayor &c., 7 N. Y. 314, 325; Varick v. Smith, 5 Paige (N. Y.) 137; s. c. 28 Am. D. 417; Coster v. Tidewater Co., 18 N. J. Eq. 54, 67; Scudder v. Trenton &c. Co., 1 N. J. Eq. 694; s. c. 23 Am. D. 756; Concord R. Co. v. Greeley, 17 N. H. 47; Smedley v. Irwin, 51 Pa. St. 445; Mayor &c. v. Scott, 1 Pa. St. 309; Sadler v. Langham, 34 Ala. 311, 327; Aldridge v. Tuscumbia R. Co., 2 St. & P. (Ala.) 199; s. c. 23 Am. D. 307; New Central Coal Co. v. George's Creek Coal &c. Co., 37 Md. 537; Anderson v. Tuberville, 6 Coldw. (Tenn.) 150; Memphis Freight Co. v. Mayor &c., 4 Coldw. (Tenn.) 419; Challis v. Atchison &c. R. Co., 16 Kan. 117; Parham v. Justices, 9 Ga. 341; Ford v. Chicago &c. R. Co., 14 Wis. 609; Tait's Ex'r v. Central Lunatic Asylum, 84 Va. 271; s. c. 4 S. E. 697; Sholl v. German Coal Co., 118 Ill. 427; s. c. 10 N. E. 199; In re Union Ferry Co., 98 N. Y. 139; Stockton &c. R. Co. v. Common Council &c., 41 Cal. 147; Napa &c. R. Co. v. Board &c., 30 Cal. 435, 437; County Court &c. v. Griswold, 58 Mo. 175; Lewis Eminent Domain 162, 238. But it is competent for the state to delegate the authority to adjudicate upon the question to the tribunal which has cognizance of the proceeding for appropriation: Cooley Const. Lim. (6th ed.) 663; citing (among other cases) In re New York &c. R. Co., 66 N. Y. 407; In re St. Paul &c. R. Co., 34 Minn. 227; s. c. 25 N. W. 345; State v. Proprietors &c., 46 N. J. L. 495; Tracy v. Elizabethtown &c. R. Co., 80 Ky. 259; Spring Valley Water Works v. San Mateo Water Works, 64 Cal. 123; s.

§ 703. Legislative declaration conclusive.—Conceding that the determination by the legislative authority that a certain appropriation of property is for a public use may be supervised, and in cases of gross error or extreme wrong controlled by the judgment of the courts, the rule is qualified in a very important particular by a decision of the court of appeals of New York. The legislature made an appropriation for the purpose of extending a public canal by dredging a private mill-race which drew its supply of water from one side of the canal.[103] The plaintiff, who was the owner of a race on the other side, complained that the volume of water to which he was entitled would be diminished, and he successfully assailed the validity of the act in the trial court by showing upon the testimony of witnesses that the improvement could not benefit the canal, but would benefit the property of the owner of the race which was to be enlarged. But the court of appeals sustained the act, reversing the judgment of the court below. O'Brien, J., premising that the purpose of the work, so far as it appeared on the face of the statute, was public and not private, continued as follows: "The expenditure may in fact be improvident and the work may prove to be useless to the public, but the legislature, as the depositary of the sovereign powers of the people, must necessarily be the judge of the propriety and utility of making it. If it were otherwise, every appropriation of money by the legislature could be assailed in the courts, at the suit of private individuals, on the ground that they are useless and intended for a purpose other than is plainly expressed, in order to evade some provision of the organic law. The judicial department can not institute an inquiry concerning the motives and purposes of the legislature, in order to attribute to it a design contrary to that clearly expressed or fairly implied in the bill, without disturbing or impairing in some measure the powers and functions assigned by the constitution to each department of the government. The courts can not determine, upon the testimony of witnesses, that the purpose of the legislature was to appropriate public money for the benefit of an individual, when it has expressed its purpose in the bill itself to be the enlargement or improvement of the canal. They must assume that the legislature acted in good faith and meant just what it said, though it may be possible to show, outside of the language and terms of the bill, that in fact

c. 28 Pac. 447; Cape Girardeau &c. Road v. Dennis, 67 Mo. 438. See also, Rensselaer &c. R. Co. v. Davis, 43 N. Y. 137; Milwaukee &c. R. Co. v. City of Faribault, 23 Minn. 167; Lecoul v. Police Jury, 20 La. An. 308.

[103] The ostensible purpose of the improvement was to permit navigation by boats from the canal to a public street.

all, or the larger part, of the benefits following the expenditure may or will be reaped by a few individuals. * * * Reason and authority as well as the fitness of things demand that when an act of the legislature appropriating money is assailed upon the ground that the purpose of such appropriation is local or private and not public, the question shall be determined by the language and general scope of the act."[104]

§ 704. Public uses as respects municipalities—Parks and streets.—Municipalities may be authorized to condemn private property for public roads and streets,[105] public parks,[106] and public

[104] Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345, 358; s. c. 28 N. E. 358. The language of the court, as quoted in the text, had direct reference to the contention that the purpose of the bill was local and private, requiring the assent of two-thirds of the members of each house, which it did not receive, and in another part of the opinion it was shown that the plaintiff, under the facts proved in the case, had no right to the water which would be diverted from him. But the doctrine would seem to be necessarily applicable to a bill for the appropriation of private property, and the court evidently so regarded the matter.

[105] Sadler v. Langham, 34 Ala. 311; Sherman v. Buick, 32 Cal. 241; Reynolds v. Reynolds, 15 Conn. 83; O'Reiley v. Kankakee Val. &c. Co., 32 Ind. 169; Dorgan v. City of Boston, 94 Mass. 223; Watson v. Town Council &c., 5 R. I. 562; Seaman v. Hicks, 8 Paige (N. Y.) 655; Elliott Roads & Streets (2d ed.), §§ 190, 195; Coster v. Tide Water Co., 18 N. J. Eq. 54; City of Savannah v. Hancock, 91 Mo. 54; s. c. 3 S. W. 215; United States v. Railroad Bridge Co., 6 McLean 317. Land can not be appropriated for private ways: Sadler v. Langham, 34 Ala. 311; Roberts v. Williams, 15 Ark. 43; Nesbit v. Trumbo, 39 Ill. 110; Bankhead v. Brown, 25 Iowa 540; Dickey v. Tennison, 27 Mo. 373; Taylor v. Porter, 4 Hill (N. Y.) 140; s. c. 40 Am. D. 274. Cf. Brewer v. Bowman, 9 Ga. 37; Robinson v. Swope, 12 Bush (Ky.) 21. "It is not the amount of travel, the extent of the use of a highway by the public that distinguishes it from a private way or road. It is the right to so use or travel upon it, not its exercise:" Wild v. Deig, 43 Ind. 455, 461; s. c. 13 Am. R. 399. But it may be a public road though maintained at private expense: Denham v. County Com'rs, 108 Mass. 202; Davis v. Smith, 130 Mass. 113; Shaver v. Starrett, 4 Ohio St. 494; Perrine v. Farr, 22 N. J. L. 356; Procter v. Andover, 42 N. H. 348. See also, Copeland v. Packard, 16 Pick. (Mass.) 217; Crockett v. City of Boston, 5 Cush. (Mass.) 182; Parks v. Mayor &c., 8 Pick. (Mass.) 218. Power to narrow a street may be given, but the easement of the abutting owners in the street as it exists must be paid for: Town of Rensselaer v. Leopold, 106 Ind. 29; s. c. 5 N. E. 761. Highways may be laid out for pleasure driving: Higginson v. Inhabitants &c., 11 Allen (Mass.) 530; Petition of Mount Washington Road Co., 35 N. H. 134; Lewis Eminent Domain, § 175.

[106] People v. Williams, 51 Ill. 57; In re Central Park Extension, 16 Abb. Pr. (N. Y.) 56; City of Phila-

squares.[107] But land can not be taken for private roads. Dillon, C.J., delivering the opinion of the supreme court of Iowa, said: "Wherever, by any well-considered decision, private roads have been sustained, it was because they were regarded as public in their character; and if properly so regarded, laws authorizing their establishment would doubtless be valid."[108] In Vermont it was held that pent roads are not necessarily and essentially private.[109] And where land is condemned for a public square it is immaterial whether it is intended to be traveled upon or not, and it is no objection that damages are to be assessed upon the owners of adjoining property, be they few or many.[110]

§ 705. The same subject continued—Water, gas, etc.—So, also, in the exercise of the power of eminent domain private property may be taken for the purpose of supplying the inhabitants with water[111]

delphia v. Germantown Pass. R. Co., 10 Phila. (Pa.) 165. Land for a park may be condemned outside the city limits and conveniently near thereto: Matter of Mayor of New York, 99 N. Y. 569; s. c. 2 N. E. 642; Thompson v. Moran, 44 Mich. 602; s. c. 7 N. W. 180. In St. Louis Co. Court v. Griswold, 58 Mo. 175, it was held that a county might be empowered to take land for a park near to but outside of the limits of the city of St. Louis, and create a county debt therefor. Nor was the act void for uncertainty because the title to the land was to vest in "the people of the county." As to the rights of a landowner whose premises front on a public park to enjoin its use for other than public purposes, see Morris v. Sea Girt Land Imp. Co., 38 N. J. Eq. 304 and note.

[107] Owners &c. v. Mayor &c., 15 Wend. (N. Y.) 374.

[108] Bankhead v. Brown, 25 Iowa 540, 549.

[109] Warren v. Bunnell, 11 Vt. 600.

[110] Owners &c. v. Mayor &c., 15 Wend. (N. Y.) 374.

[111] Burden v. Stein, 27 Ala. 104, 116; Cummings v. Peters, 56 Cal. 593; Lake Pleasanton W. Co. v. Contra Costa W. Co., 67 Cal. 659; s. c. 8 Pac. 501; St. Helena W. Co. v. Forbes, 62 Cal. 182; Lumbard v. Stearns, 4 Cush. (Mass.) 60; Ham v. City of Salem, 100 Mass. 350; Inhabitants &c. v. County Com'rs, 4 Gray (Mass.) 500; Bailey v. Inhabitants &c., 126 Mass. 416; Tyler v. Inhabitants &c., 147 Mass. 609; s. c. 18 N. E. 582; Martin v. Gleason, 139 Mass. 183; s. c. 29 N. E. 664; Matter of New Rochelle Water Co., 46 Hun (N. Y.) 525; Gardner v. Trustees &c., 2 Johns. Ch. (N. Y.) 162; Stamford Water Co. v. Stanley, 39 Hun (N. Y.) 424; In re Middletown Village, 82 N. Y. 196; In re Rochester Water Com'rs, 66 N. Y. 413; Reddell v. Bryan, 14 Md. 444; Kane v. Mayor &c., 15 Md. 240; Riche v. Bar Harbor Water Co., 75 Maine 91; Thorn v. Sweeney, 12 Nev. 251; State v. City of Eau Claire, 40 Wis. 533. For this purpose also, authority may be given to condemn property situated at a distance from the city: Mayor &c. v. Bailey, 2 Denio (N. Y.) 433, 446. Compensation must be made to those who own the right to use the water: City of Emporia v. Soden, 25 Kan. 588; s. c. 37 Am. R. 265.

and gas[112] for public school buildings,[113] markets,[114] and almshouses.[115]

§ 706. The same subject continued—Cemeteries, sewers, etc.—Lands may also be condemned for the purpose of a public cemetery.[116] In this instance the land is deemed to be taken for public use, if all the public have a right of burial there, even though the privilege must be paid for and thus operate practically to exclude some persons.[117] But it is otherwise if the public have not and can not acquire the right of sepulture.[118] The construction of drains and sewers and levees is a public purpose.[119] But drainage laws which permit the taking of property for the chief object of promoting private interests are unconstitutional.[120]

[112] Bloomfield &c. Co. v. Richardson, 63 Barb. (N. Y.) 437. See also, In re Deering, 93 N. Y. 361; Providence Gas Co. v. Thurber, 2 R. I. 15; Johnston v. People's Natural Gas Co. (Pa.), 5 Cent. R. 564.

[113] Chamberlin v. Morgan, 68 Pa. St. 168; Long v. Fuller, 68 Pa. St. 170; Township Board &c. v. Hackman, 48 Mo. 243; Williams v. School Dist., 33 Vt. 271.

[114] Matter of Application of Cooper, 28 Hun (N. Y.) 515.

[115] Hayward v. Mayor &c., 8 Barb. (N. Y.) 486. And public buildings of all kinds: Lewis Eminent Domain, § 174.

[116] Evergreen Cemetery Ass'n v. Beecher, 53 Conn. 551; s. c. 5 Atl. 353; Balch v. County Com'rs, 103 Mass. 106; Edgecumbe v. City of Burlington, 46 Vt. 218.

[117] Evergreen Cemetery Ass'n v. Beecher, 53 Conn. 551; s. c. 5 Atl. 353.

[118] Evergreen Cemetery Ass'n v. Beecher, 53 Conn. 551; s. c. 5 Atl. 353; Matter of Deansville Cemetery Ass'n, 66 N. Y. 569.

[119] Patterson v. Baumer, 43 Iowa 477; Sessions v. Crunkilton, 20 Ohio St. 349; Zimmerman v. Canfield, 42 Ohio St. 463; s. c. 9 Am. & Eng. Corp. Cas. 382; Hildreth v. City of Lowell, 11 Gray (Mass.) 345; People v. Nearing, 27 N. Y. 306; Norfleet v. Cromwell, 70 N. C. 634; s. c. 16 Am. R. 787; Hartwell v. Armstrong, 19 Barb. (N. Y.) 166; Burk v. Ayers, 19 Hun (N. Y.) 17; Matter of Ryers, 72 N. Y. 1; Dingley v. City of Boston, 100 Mass. 544; Bancroft v. City of Cambridge, 126 Mass. 438.

[120] Jenal v. Green Island Draining Co., 12 Neb. 163; s. c. 10 N. W. 547; Cypress Pond Draining Co. v. Hooper, 2 Met. (Ky.) 350; Reeves v. Treasurer &c., 8 Ohio St. 333; Patterson v. Baumer, 43 Iowa 477. Cf. Seely v. Sebastian, 4 Or. 25; Anderson v. Kerns Draining Co., 14 Ind. 199; s. c. 77 Am. D. 273; Pool v. Trexler, 76 N. C. 297. In discussing a drainage act the court of appeals of New York (Folger, J.) said:—"Drainage acts of the legislature not having in view the public health solely have been recognized and acquiesced in by the courts. But we wish to be distinctly understood that we sustain this act as constitutional solely for that it plainly has for its purpose the preservation and promotion of the public health. . . . That the public purpose may be sought and attained, and private benefit also found, is not improbable. So it is when private property is

§ 707. The same subject continued—Leasing for public use.—In a case decided by the New York court of appeals,[121] it was urged that the provisions of the New York statute[122] authorizing the mayor, aldermen and commonalty of the city of New York to acquire water-front property, including piers and bulkheads, were unconstitutional, upon the ground that they contemplated an appropriation to the *sole* use of special kinds of commerce or of steamboats, and also a lease of certain piers and rights of wharfage to a particular steamship-line to the exclusion of all others, thus constituting what was contended to be a private and not a public use. Peckham, J., delivering the opinion of the court, conceding that an interest may be of a public nature when the use may tend incidentally to benefit the public in some collateral way, in which case the right to take property in invitum does not exist, proceeded to show that property may rightfully, under certain circumstances, be devoted to a special and particular public use, and yet the entire public be permitted to use it or have access to it only in a very restricted manner. Applying these well-recognized principles to the case in hand, he continued: "We must consider the nature of the property which is to be so used or leased, and the object and purpose of such use must be viewed in connection with the whole of the property of like nature under the control and ownership of the city. * * * The circumstances surrounding the case must be viewed in all aspects. The act plainly contemplates, through all its provisions, the fact that there will always remain under the direct control and possession of the city sufficient piers and docks for the accommodation of all the commerce which may seek our port, and which has no special pier or dock leased to the owner of the vessel desiring dock facilities." The act was unanimously pronounced constitutional.[123]

taken for the public use of a railroad, and in quite as great degree; but in such case the private interest promoted is said to be incidental. And though the works authorized to effect this public purpose are in any case not extended beyond a particular, and it may be a small, district, the purpose is the same and is public:" Matter of Ryers, 72 N. Y. 1, 8. The constitutionality of these acts is treated at length, and the authorities collated by states, in Lewis Eminent Domain, § 188 et seq.

[121] In re Application of Mayor &c., 99 N. Y. 569; s. c. 2 N. E. 642; Law Jour., October 27, 1892.

[122] Ch. 574, laws of 1871.

[123] The opinion continues:—"Considering the large extent of the property of this description owned and to be owned by the city, together with the fact that there is no absolute direction to the city to lease the smallest portion thereof to any one, we became at once convinced that the leasing which will be actually carried on under this mere permission will amount to no more than a special regulation of the manner in

§ 708. The same subject continued—Ornamental purposes.—Bynkershoek is quoted by Chancellor Kent[124] as insisting "that private property can not be taken on any terms without consent of the owner for purposes of public ornament or pleasure." And Judge Dillon says that "if it be admitted or shown in any given case that the ornamental purpose is not associated with any useful purpose, it would seem to be true that it is inconsistent with the respect in which all enlightened governments hold private property to say that it can be compulsorily taken from the owner."[125] No case seems to have been adjudicated in which the contemplated purpose was wholly dissociated from any recognized "useful" purpose. But the doctrine to be applied has been distinctly declared by the supreme court in Vermont. The commissioners in a proceeding to lay out a highway adjacent to a court-house and town hall reported that they established the road upon the ground of a general public necessity and convenience which they considered almost indispensable for the use of the court-house and town hall, etc., taking into account in part "the looks" as well as the convenience and necessity; but that "for the purpose of embellishment alone or mainly" they should not have established the road. The decision of the county court rejecting this report was reversed upon appeal. Redfield, C. J., said: "If it appeared upon the face of the report that the prevailing ground with the commissioners in establishing the highway was that of ornament and improvement of the court-house grounds, we should regard it as an insufficient basis upon which to lay the highway, and as equivalent to a report against its being laid. But in the present case we understand the prevailing motive in laying out the road was the public convenience and private necessity, and the matter of ornament merely incidental and accessory. In that view * * * it does not seem to us objectionable."[126]

which a comparatively small portion of the whole property of this nature owned by the city shall be used for the legitimate ends of commerce. . . . When used by lessees under the facts already stated, the use is a public one. The use is public while the property is thus leased, because it fills an undisputed necessity existing in regard to these common carriers by water, who are themselves engaged in fulfilling their obligations to the general public; obligations which could not otherwise be properly or effectually performed. And in filling the necessity for such accommodations the city or state is only performing its public duty."

[124] Gardner v. Trustees &c., 2 Johns. Ch. (N. Y.) 161, 165.

[125] 2 Dillon Munic. Corp., § 599, where the author also remarks that "it would be an extreme case where a purpose was wholly ornamental and not at all useful."

[126] Town of Woodstock v. Gallup, 28 Vt. 587, 590. See also, West River Bridge Co. v. Dix, 6 How. 507. In

§ 709. Notice of proceeding—Necessity for.—The phrase "due process of law," in the fourteenth amendment of the federal constitution, is held to require notice to the owners of land which it is sought to appropriate by condemnation proceedings. "Due process of law," said the court of appeals of New York, "requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We can not conceive of due process of law without this."[127] But it is not needful that the statute should provide for personal and individual notice, as distinguished from public and general notice given by advertisements in newspapers.[128] And the propriety of taking private property for a public use is not strictly a judicial question, and the parties interested have no constitutional right to notice of proceedings to determine whether it shall be taken or not.[129]

Higginson v. Inhabitants &c., 11 Allen (Mass.) 530, it was held that where there is a sufficient amount of travel to warrant the laying out of a highway, the reasons which may induce people to travel on it are immaterial, and that pleasure travel may be accommodated as well as business travel. "Streets may be widened and court-yards left which are for ornament and not open to public travel:" Mills Eminent Domain, § 18; citing In re Bushwick Ave., 48 Barb. (N. Y.) 9.

[127] Stuart v. Palmer, 74 N. Y. 183; Campbell v. Dwiggins, 83 Ind. 473; Harbeck v. City of Toledo, 11 Ohio St. 219; Lake Shore &c. R. Co. v. Cincinnati &c. R. Co., 116 Ind. 578; s. c. 19 N. E. 440; Molett v. Keenan, 22 Ala. 484; Nichols v. City of Bridgeport, 23 Conn. 189; Matter of Village of Middletown, 82 N. Y. 196; Langford v. Commissioners, 16 Minn. 375; Darlington v. Commonwealth, 41 Pa. St. 68; Mayor &c. v. Bouldin, 23 Md. 328; Kidder v. City of Peoria, 29 Ill. 77. The case of Swan v. Williams, 2 Mich. 427, holding that no notice is required, is pronounced by Messrs. Elliott to be absolutely unsound: Elliott Roads & Streets (2d ed.), § 197, n. In § 197 the learned and discriminating authors maintain that some provision for notice is absolutely essential to the constitutionality of a law conferring the power to condemn, and must be so declared though the property-owner actually appears before the appraisers; and they hold to the dissenting opinion in Kramer v. Cleveland &c. R. Co., 5 Ohio St. 140.

[128] Matter of Petition of De Peyster, 80 N. Y. 565; United States Trust Co. v. United States Ins. Co., 18 N. Y. 199; Starbuck v. Murray, 5 Wend. (N. Y.) 148; s. c. 21 Am. D. 172; Davies v. City of Los Angeles, 86 Cal. 37; s. c. 24 Pac. 771; Polly v. Saratoga &c. R. Co., 9 Barb. (N. Y.) 449; Owners &c. v. Mayor &c., 15 Wend. (N. Y.) 374; Wilson v. Hathaway, 42 Iowa 173 (followed in State v. Chicago &c. R. Co., 80 Iowa 586; s. c. 46 N. W. 741); Mason v. Messenger, 17 Iowa 261; Cupp v. Board &c., 19 Ohio St. 173; Wilkin v. St. Paul &c. R. Co., 16 Minn. 271; Inhabitants &c. v. Morton, 25 Mo. 593; Nations v. Johnson, 24 How. 195.

[129] People v. Smith, 21 N. Y. 595, distinguishing such cases from the

§ 710. **Parties entitled to notice.**—In proceedings to condemn land the statute generally provides that notice shall be given to the "owners," which is construed to include those who have vested estates appearing of record,[130] but not those whose interest consists of a mere lien, or contingent or inchoate estate. Under this rule a judgment creditor[131] and the holder of a contingent dower interest have no such substantial right as to be entitled to notice.[132]

§ 711. **Service of notice.**—The notice, if so directed, must be to the owner by name.[133] But it need not be personally served on him,[134] although if sent by mail, and by reason of improper addressing it never reaches the person for whom it is intended, the proceeding as to him is of no effect.[135] Where several commissioners published a

process for arriving at the amount of compensation; George's Creek Coal Co. v. New Central &c. Co., 40 Md. 425; Elliott Roads & Streets (2d ed.), § 200.

[130] Gerrard v. Omaha &c. R. Co., 14 Neb. 270; s. c. 15 N. W. 231; Parks v. City of Boston, 15 Pick. (Mass.) 198; Shelton v. Town of Derby, 27 Conn. 414; Borough of Harrisburg v. Crangle, 3 W. & S. (Pa.) 460; New Orleans R. Co. v. Frederic, 46 Miss. 1; Philadelphia &c. R. Co. v. Williams, 54 Pa. St. 103; Elliott Roads & Streets (2d ed.), § 323, and cases there cited. Mortgagees are necessary parties: Wilson v. European &c. R. Co., 67 Maine 358; Sherwood v. City of Lafayette, 109 Ind. 411; s. c. 10 N. E. 89; Severin v. Cole, 38 Iowa 463; Hagar v. Brainard, 44 Vt. 294; Cool v. Crommet, 13 Maine 250; Parker's Case, 36 N. H. 84; Astor v. Hoyt, 5 Wend. (N. Y.) 603; Mutual L. Ins. Co. v. Eastern &c. R. Co., 38 N. J. Eq. 132. And tenants in common: Grand Rapids &c. R. Co. v. Alley, 34 Mich. 16. Cf. Bowman v. Venice &c. R. Co., 102 Ill. 459. And both landlord and tenant: Voegtly v. Pittsburgh &c. R. Co., 2 Grant Cas. (Pa.) 243; 6 Am. & Eng. Encyc. of Law 609. The trustee represents his cestui que trust: Hawkins v. County Com'rs, 2 Allen (Mass.) 254; State v. Mayor &c., 32 N. J. L. 49. As to waiver of insufficiency in the notice by appearance without objections, see Harrington v. Wofford, 46 Miss. 31; Morrow v. Weed, 4 Iowa 77; People v. Hagar, 52 Cal. 171; Delany v. Gault, 30 Pa. St. 63; Muncey v. Joest, 74 Ind. 409; Headrick v. Whittemore, 105 Mass. 23. In Williams v. Hartford &c. R. Co., 13 Conn. 397, a notice was sent on the day previous to the appraisal to the owner, who lived in close proximity to the place. He sent a written protest but not asking for delay. The notice was held sufficient. "If the facts are such as to impart notice that the person in possession has a proprietary claim to the land or color of title, then he should be made a party:" Elliott on Roads & Streets (2d ed.), § 324 and cases cited.

[131] Gimbel v. Stolte, 59 Ind. 446; Watson v. New York &c. R. Co., 47 N. Y. 157.

[132] Moore v. Mayor, 4 Sandf. (N. Y.) 456; Jackson v. Edwards, 7 Paige Ch. (N.Y.) 386; City of Indianapolis v. Kingsbury, 101 Ind. 200; s. c. 51 Am. R. 749; Duncan v. City of Terre Haute, 85 Ind. 104. See also, Simar v. Canaday, 53 N. Y. 298.

[133] Birge v. Chicago &c. R. Co., 65 Iowa 440; s. c. 21 N. W. 767.

[134] Harper v. Lexington &c. R. Co., 2 Dana (Ky.) 227.

[135] Morgan v. Chicago &c. R. Co., 36

notice that lands were about to be taken for a railroad and that they would meet on a day named to lay out the route and assess damages, and the notice was directed, "To all persons owning land on the line of the railroad, as the same is now or may be located through section 23, township 11, range 25, in the county of Wyandotte and state of Kansas," the United States supreme court held it to be sufficient notice to any one owning a quarter-section in section 23 that some of his land might be taken.[136] It was further held that a non-resident owner was concluded by such publication as well as a resident owner.[137] Where the form of the notice is matter of detail in the enabling act, the provisions must be carefully carried out. Thus if the law says the notice must state the time when the commissioners will begin condemnation proceedings and it fails to show the time, the proceedings will be held void;[138] or if the law directs the notice to be served, in case of a corporation, on its president, or some other named officer, service on any other official is not legal service.[139]

§ 712. **Treaty with the owner.**—The owner of property has no constitutional right to an opportunity to sell and a failure to agree as a preliminary to proceedings to condemn.[140] But it has been held that if the statute authorizes a seizure only in case no agreement can be made with him, the proceedings are fatally defective if they fail to show that this condition has been fulfilled.[141] According to some

Mich. 428. The substance of the notice must be such as the statute requires and must be given in the mode prescribed, and if proceedings are not begun at the time designated a new notice must be issued. These and all other matters relating to the condemnation of land for roads and streets are carefully and thoroughly treated in Elliott Roads & Streets (2d ed.), chs. 13-15.

[136] Huling v. Kaw Val. R. &c. Co., 130 U. S. 559; s. c. 9 S. Ct. 603.

[137] See also, Harvey v. Tyler, 2 Wall. 328; Secombe v. Railroad Co., 23 Wall. 108; Pennoyer v. Neff, 95 U. S. 714; McMillan v. Anderson, 95 U. S. 37; Davidson v. New Orleans, 96 U. S. 97, 105; Hagar v. Reclamation Dist., 111 U. S. 701; s. c. 4 S. Ct. 663; Boom Co. v. Patterson, 98 U. S. 403, 406.

[138] Missouri Pac. R. Co. v. Houseman, 41 Kan. 300, 304; s. c. 21 Pac. 284.

[139] In re St. Paul &c. R. Co., 36 Minn. 85; s. c. 30 N. W. 432; Ackerman v. Huff, 71 Tex. 317; s. c. 9 S. W. 236. See also, Cory v. Chicago &c. R. Co., 100 Mo. 282; s. c. 13 S. W. 346. Any local rule, statutory or judicial, that notice is ineffectual unless personally served on all resident owners, must be strictly followed: Mulligan v. Smith, 59 Cal. 206; State v. Common Council &c., 42 Wis. 287; Kundinger v. City of Saginaw, 59 Mich. 355; s. c. 26 N. W. 634.

[140] Grand Rapids v. Grand Rapids &c. R. Co., 58 Mich. 641; s. c. 26 N. W. 159.

[141] Graf v. City of St. Louis, 8 Mo. App. 562; citing Kansas City &c. R. Co. v. Campbell, 62 Mo. 585; Moses v. St. Louis Sectional Dock Co., 84 Mo. 242; reversing s. c. 9 Mo. App.

authorities proof of the fact is deemed to be waived by proceeding to trial without objection,[141a] while others declare that the objection may be taken at any stage of the case, even after award.[142] There must be a genuine effort to effect an agreement,[143] but "the attempt need not be prosecuted further than to develop the fact that an agreement is impossible,"[144] and if the owner is under a legal disability to contract, the statute has no application.[145] If the petition states the inability to agree, it need not recite the circumstances,[146] unless the statute so requires.[147]

§ 713. **The application or petition.**—The statute sometimes grants power to the municipal authorities to initiate proceedings to condemn land of their own motion, but more generally it is provided that this shall be done upon application or petition. In the latter case a sufficient application is absolutely essential to confer jurisdiction.[148] The petition should be in substantial conformity with the statute, but technical accuracy is not requisite.[149] If, however, it is provided that

571. See also, to the same point, State v. Inhabitants &c., 36 N. J. L. 499; Matter of Opening House Ave., 67 Barb. (N. Y.) 350; Matter of Marsh, 71 N. Y. 315; Powers v. Hazelton &c. R. Co., 33 Ohio St. 429; Arnold v. Village of Decatur, 29 Mich. 77; Gilmer v. Lime Point, 19 Cal. 47; Morseman v. City of Ionia, 32 Mich. 283. Cf. Ætna Mills v. Inhabitants &c., 126 Mass. 422; Ney v. Swinney, 36 Ind. 454. In Hall v. People, 57 Ill. 307, such a provision was held directory in a collateral proceeding.

[141a] Taylor v. Clemson, 11 Cl. & F. 610; President &c. v. Diffebach, 1 Yeates (Pa.) 367.

[142] Lewis Eminent Domain, § 301 and cases there cited.

[143] Laue v. City of Saginaw, 53 Mich. 442; s. c. 19 N. W. 137.

[144] Lewis Eminent Domain, § 302; citing Matter of the Village of Middleton, 82 N. Y. 196.

[145] Laue v. City of Saginaw, 53 Mich. 442; s. c. 19 N. W. 137. See also, President &c. v. Diffebach, 1 Yeates (Pa.) 367.

[146] Bowman v. Venice &c. R. Co., 102 Ill. 459; Matter of Lockport &c. R. Co., 77 N. Y. 557.

[147] See Matter of Marsh, 71 N. Y. 315.

[148] State v. Morse, 50 N. H. 9 (holding, however, that although the record of the laying out of a highway disclosed no application, yet the record being ancient, such an application might be presumed by the jury, in connection with user even for less than twenty years); Oliphant v. Commissioners &c., 18 Kan. 386; Commonwealth v. Peters, 3 Mass. 229; State v. County Com'rs, 6 Neb. 129; People v. Judge &c., 40 Mich. 64; State v. Berry, 12 Iowa 58. The municipal authorities can not delegate the power confided to them: Oliphant v. Commissioners &c., supra. But they may appoint a committee to report on expediency: Dorman v. City Council &c., 81 Maine 411; s. c. 17 Atl. 316.

[149] The use of the word "road" instead of "highway" is not fatal: Inhabitants &c. v. Commissioners, 26 Maine 406. See also, Board &c. v. Hogan, 39 Kan. 606; s. c. 18 Pac. 611: Dorman v. City Council &c., 81

the petition must be signed by a certain number of persons with prescribed qualifications, this is a jurisdictional requirement, and if the record fails to show affirmatively the existence of the fact, the proceedings will, when attacked directly, as by petition in error, be held void.[150] If attacked collaterally, it may be proved by evidence aliunde that the petitioners are duly qualified.[151] There is no jurisdiction to act unless the petition contains substantially all that the statute declares shall be inserted in it. Thus a statement that in the opinion of the petitioners the improvement asked for should be made is not an averment that in their opinion public interests require it.[152] But the law looks to the substance rather than to the form, and if there is a substantial compliance with every essential condition it is sufficient.[153] In the case of a proposed highway it is the practice to state at least the termini with reasonable and approximate definiteness,[154] and it should appear affirmatively that it is within the territorial jurisdiction of the tribunal;[155] and an averment of necessity for the taking is generally deemed jurisdictional.[156]

Maine 411; s. c. 17 Atl. 316. Nor is it necessary that those authorized to judge of the necessity and convenience of ways shall use technical terms in their adjudication and location, provided their intention is manifest, and they have jurisdiction of the subject: Inhabitants &c. v. Commissioners, 26 Maine 406. "Public convenience and necessities of the city" is equivalent to the statutory phrase, "common convenience and necessity:" Dorman v. City Council &c., 81 Maine 411; s. c. 17 Atl. 316.

[150] Oliphant v. Commissioners &c., 18 Kan. 386; Early v. Hamilton, 75 Ind. 376; Board &c. v. Muhlenbacker, 18 Kan. 129; Conoway v. Ascherman, 94 Ind. 187.

[151] Oliphant v. Commissioners &c., 18 Kan. 386; Willis v. Sproule, 13 Kan. 257; Robinson v. Rippey, 111 Ind. 112; s. c. 12 N. E. 141; Austin v. Allen, 6 Wis. 134.

[152] In re Grove Street, 61 Cal. 438.

[153] Matter of Commissioners of Washington Park, 52 N. Y. 131, where an annexed schedule, referred to in the petition, was deemed a part of it.

[154] Hayford v. County Com'rs &c., 78 Maine 153; s. c. 3 Atl. 51; Inhabitants &c. v. County Com'rs, 12 Cush. (Mass.) 351, in both of which cases the petition was fatally defective on this point. See also, generally, on sufficiency of description, Inhabitants &c. v. Norfolk, 117 Mass. 416; Smith v. Weldon, 73 Ind. 454; Jackson v. Rankin, 67 Wis. 285; s. c. 30 N. W. 301; Clement v. Burns, 43 N. H. 609; Inhabitants &c. v. Field, 1 Conn. 279; Henline v. People, 81 Ill. 269; Inhabitants &c. v. County Com'rs, 37 Maine 112; Mossman v. Forest, 27 Ind. 233; Toledo &c. R. Co. v. Munson, 57 Mich. 42; s. c. 23 N. W. 455; West v. West &c. R. Co., 61 Miss. 536; Watson v. Crowsore, 93 Ind. 220.

[155] Elliott Roads & Streets (2d ed.), § 296.

[156] Colville v. Judy, 73 Mo. 651; In re Road in Sterrett Tp., 114 Pa. St. 627; s. c. 7 Atl. 765; Brown v. Rome &c. R. Co., 86 Ala. 206; s. c. 5 So. 195; City of Helena v. Harvey, 6 Mont. 114; s. c. 9 Pac. 903; Leath v. Summers, 3 Ired. L. (N. C.) 108. Formal objections should be specific and promptly made: Meranda v.

§ 714. **The tribunal.**—No appropriation of land can be made unless the statute provides a tribunal for the assessment of damages.[157] But while the legislature must provide an impartial tribunal to ascertain the amount of compensation,[158] and give the parties interested an opportunity to be heard before such tribunal, it may determine what the tribunal shall be—whether a jury, a court without a jury, or commissioners selected by the court.[159] The tribunal must, however, be one of a judicial nature, though not necessarily a court or a body exercising judicial functions only;[160] and the weight of au-

Spurlin, 100 Ind. 380; City of Worcester v. Keith, 5 Allen (Mass.) 17; Carr v. State, 103 Ind. 548; s. c. 3 N. E. 375; Bachelor v. New Hampton, 60 N. H. 207; Wells v. Rhodes, 114 Ind. 467; s. c. 16 N. E. 830. As to allowance of amendment, see Young v. Laconia, 59 N. H. 534; Russell v. Turner, 62 Maine 496; Coolman v. Fleming, 82 Ind. 117; Elliott Roads & Streets (2d ed.), § 341 and cases cited.

[157] Ames v. Lake Superior &c. Co., 21 Minn. 241; Pennsylvania R. Co. v. Heister, 8 Barr (Pa.) 445.

[158] What shall be a "just compensation" can be determined only by some impartial agency. The parties who take the land can not be allowed to determine it: Hessler v. Drainage Com'rs, 53 Ill. 105; Powers v. Bears, 12 Wis. 214; Lumsden v. City of Milwaukee, 8 Wis. 485. Cf. Flournoy v. City of Jeffersonville, 17 Ind. 169; McMicken v. City of Cincinnati, 4 Ohio St. 394, where the rule is relaxed in cases where an appeal is allowed. The legislature can not prescribe a schedule of prices: Cunningham v. Campbell, 33 Ga. 625. A person ought not to be appointed to review damages in laying out a road who has formed or expressed an opinion upon the subject with a knowledge of the facts, and the assessment made under such appointment will be set aside on certiorari; no person, however, who knew of such objection at the time of the appointment and did not make it then will be allowed to take advantage of it upon certiorari: Inhabitants &c. v. Dilley, 24 N. J. L. 209.

[159] Ames v. Lake Superior &c. R. Co., 21 Minn. 241. The legislature may confer upon the board of supervisors of one county the power to lay out a road in another county: People v. Board &c., 33 Cal. 487; United States v. Jones, 109 U. S. 513; s. c. 3 S. Ct. 346. The tribunal should be composed of disinterested persons. As to disqualification by relationship to parties, see Clifford v. Commissioners, 59 Maine 262. The interest of a general taxpayer may be disregarded: State v. Crane, 36 N. J. L. 394; Bradley v. City of Frankfort, 99 Ind. 417; Chase v. Town of Rutland, 47 Vt. 393. But the disqualification by direct interest has its origin in the fundamental nature of law: State v. Crane, 36 N. J. L. 394; Elliott Roads & Streets (2d ed.), §§ 273, 281, 282. Cf. Mayor &c. v. Long, 31 Mo. 369; Foot v. Stiles, 57 N. Y. 399. Selection by lot is not an appointment by the court: Menges v. City of Albany, 56 N. Y. 374.

[160] State v. Macdonald, 26 Minn. 445; s. c. sub nom. State v. District Court, 4 N. W. 1107; Doctor v. Hartman, 74 Ind. 221; White v. Conover, 5 Blackf. (Ind.) 462; State v. Richmond, 6 Fost. (N. H.) 232; Shue v. Highway Com'rs, 41 Mich. 638; s. c. 2 N. W. 808.

thority is that jurisdiction must appear upon the face of the record.[161]

§ 715. **Right to jury trial.**—The constitutional provision which declares that the right of trial by jury shall remain inviolate has no relation to proceedings for the condemnation of private property by eminent domain.[162] But some of the constitutions secure the right in this class of cases in express terms.[163] And where the word "jury" is used it is construed to denote ex vi termini a body of twelve men acting substantially through the accustomed forms by which the powers of a jury are exercised.[164] It is generally held in interpreting these provisions that if a jury trial may be had in an appellate court,

[161] Elliott Roads & Streets (2d ed.), §§ 295, 296, where the authorities are examined.

[162] The reason is that the right in such cases did not exist at common law: Beekman v. Saratoga &c. R. Co., 3 Paige Ch. (N. Y.) 45; s. c. 22 Am. D. 679; Willyard v. Hamilton, 7 Ohio (pt. 2) 111; s. c. 30 Am. D. 195; Montgomery St. R. Co. v. Sayre, 72 Ala. 443; People v. Blake, 19 Cal. 579; Scudder v. Trenton Del. Falls Co., 1 Saxt. Ch. (N. J.) 694; s. c. 23 Am. D. 756; Backus v. Lebanon, 11 N. H. 19; s. c. 35 Am. D. 466; Bruggerman v. True, 25 Minn. 123; Copp v. Henniker, 55 N. H. 179; Hymes v. Aydelott, 26 Ind. 431; Dronberger v. Reed, 11 Ind. 420; Lipes v. Hand, 104 Ind. 503; s. c. 1 N. E. 871; 4 N. E. 160; City of Kansas v. Hill, 80 Mo. 523; Kendall v. Post, 8 Or. 141; Wurts v. Hoagland, 114 U. S. 606; s. c. 5 S. Ct. 1086; Missouri Pac. R. Co. v. Humes, 115 U. S. 512; s. c. 6 S. Ct. 110; People v. Smith, 21 N. Y. 595; Hood v. Finch, 8 Wis. 381; Ligat v. Commonwealth, 19 Pa. St. 456; Virginia &c. R. Co. v. Elliott, 5 Nev. 358; Anderson v. Caldwell, 91 Ind. 451; s. c. 46 Am. R. 613; Kimball v. Board &c., 46 Cal. 19. Contra, Kramer v. Cleveland &c. R. Co., 5 Ohio St. 140; Rhine v. City of McKinney, 53 Tex. 354; Henderson &c. R. Co. v. Dickerson, 17 B. Mon. (Ky.) 173. See also, Lewis Eminent Domain, § 311. "The proceeding for the ascertainment of the value of the property and consequent compensation to be made is merely an inquisition to establish a particular fact as a preliminary to the actual taking; and it may be prosecuted before commissioners or special boards, or the courts, with or without the intervention of a jury, as the legislative power may designate. All that is required is that it shall be conducted in some fair and just manner, with opportunity to the owners of the property to present evidence as to its value, and to be heard thereon:" Justice Field in United States v. Jones, 109 U. S. 513, 519; s. c. 3 S. Ct. 346.

[163] Williams v. City of Pittsburg, 83 Pa. St. 71; Mitchell v. Illinois &c. R. Co., 68 Ill. 286; Weber v. Board &c., 59 Cal. 265; Louisville &c. R. Co. v. Dryden, 39 Ind. 393; Paul v. City of Detroit, 32 Mich. 108; Ipsom v. Mississippi &c. R. Co., 36 Miss. 300.

[164] Clark v. City of Utica, 18 Barb. (N. Y.) 451. Unanimity is necessary to a legal verdict: Lamb v. Lane, 4 Ohio St. 167; Whitehead v. Arkansas &c. R. Co., 28 Ark. 460; City of Des Moines v. Layman, 21 Iowa 153; Mitchell v. Illinois &c. R. Co., 68 Ill. 286; Cooley Const. Lim. (4th ed.) 394. Cf. Cruger v. Hudson River R. Co., 12 N. Y. 190; McManus v. McDonough, 107 Ill. 95.

it is no objection that the preliminary hearing is before a tribunal without a jury.[165] And a jury may be waived by agreement of the parties interested.[166]

§ 716. **Right to abandon proceedings.**—In the absence of statutory provisions requiring proceedings once begun to be prosecuted to completion, it is almost universally held that the party instituting them has a right to withdraw at any time before the compensation is determined; that is, before the confirmation of the commissioner's report.[167] And although it is held in New York that "the order of confirmation operates as a judgment binding both parties,"[168] the prevailing rule is that the public authorities have a reasonable time to decide whether to accept the land or other property at the price fixed or to discontinue the proceedings.[169]

[165] Steuart v. Mayor &c., 7 Md. 500; Hapgood v. Doherty, 8 Gray (Mass.) 373; Tharp v. Witham, 65 Iowa 566; s. c. 22 N. W. 677; Maxwell v. Board &c., 119 Ind. 20, 23; s. c. 19 N. E. 617; 21 N. E. 453; Lamb v. Lane, 4 Ohio St. 167; Reckner v. Warner, 22 Ohio St. 275; Mayor &c. v. Central R. Co., 53 Ga. 120. A bond may be required by statute on appeal: Lewis Eminent Domain, § 312 and cases cited.

[166] Chicago &c. R. Co. v. Hock, 118 Ill. 587; s. c. 9 N. E. 205.

[167] City of Elkhart v. Simonton, 71 Ind. 7; Brokaw v. City of Terre Haute, 97 Ind. 451; Pittsburgh &c. R. Co. v. Swinney, 97 Ind. 586; Hunting v. Curtis, 10 Iowa 152; Corbin v. Cedar Rapids &c. R. Co., 66 Iowa 73; s. c. 23 N. W. 270; Graff v. Mayor &c., 10 Md. 544; Black v. Mayor &c., 50 Md. 235; Clarke v. Manchester, 56 N. H. 502; Whyte v. City of Kansas, 22 Mo. App. 409; City of St. Joseph v. Hamilton, 43 Mo. 282; Stiles v. Town of Middlesex, 8 Vt. 436; Hullin v. Second Municipality, 11 Rob. (La.) 97; Application &c. for Widening of Roffignac St., 4 Rob. (La.) 357; Stevens v. Borough of Danbury, 53 Conn. 9; O'Neil v. Board &c., 41 N. J. L. 161; Chesapeake &c. R. Co. v. Bradford, 6 W. Va. 220. In New York it was held that the court may impose conditions: Matter of Waverly Water-Works, 85 N. Y. 478. See also, Beekman Street, 20 Johns. (N. Y.) 269; Lewis Eminent Domain, § 655. It would seem to be reasonable to require a party to make his election within the time allowed for filing objections to the report: Crume v. Wilson, 104 Ind. 583; s. c. 4 N. E. 169; People v. Common Council &c., 78 N. Y. 56. In England, after notice of intention to take, even before the price is ascertained, the proprietor acquires the right to insist upon fulfilment of the award when made: Birmingham &c. R. Co. v. Reg., 6 Ry. Cas. 628; s. c. 4 Eng. L. & Eq. 276; King v. Market St. Com'rs, 4 B. & Ad. 333; Stone v. Commercial R. Co., 4 M. & C. 122; Walker v. Eastern Counties R. Co., 6 Hare 594; Tawney v. Lynn &c. R. Co., 16 L. J. (N. S.) Eq. 282.

[168] Matter of Rhinebeck &c. R. Co., 67 N. Y. 242. See also, Drath v. Burlington &c. R. Co., 15 Neb. 367; s. c. 18 N. W. 717.

[169] O'Neil v. Board &c., 41 N. J. L. 161; State v. Halsted, 39 N. J. L. 640; Merrick v. Mayor &c., 43 Md. 219; Mayor &c. v. Musgrave, 48 Md. 272; City of St. Joseph v. Hamilton,

§ 717. Damages upon discontinuance of proceedings.—Upon a discontinuance the landowner is entitled to recover his legal costs, at any rate, and probably other legitimate expenses,[170] which in one case were held not to include counsel fees.[171] "If, pending proceedings, possession has been taken of the property sought to be condemned, the abandonment of such proceedings renders such possession wrongful from the beginning, and a suit will lie for any damages occasioned by the entry and possession."[172] In many cases the owner is kept in suspense for a considerable period before the election to discontinue is made, during which time he is unable to dispose of his property, deems it injudicious to improve it, or is otherwise deprived of the beneficial use of it. The supreme court of Louisiana declared that the fact of great delay and abandonment of the suit was prima facie evidence that it was unnecessary and gave judgment for damages.[173] The same doctrine was laid down by the court of appeals of Maryland,[174] and subsequently affirmed with the qualification that the

43 Mo. 282; People v. Village of Hyde Park, 117 Ill. 462; s. c. 6 N. E. 33; Wilkinson v. Bixler, 88 Ind. 574; Carson v. City of Hartford, 48 Conn. 68; State v. Mills, 29 Wis. 322. There should be no unreasonable delay: Baltimore &c. Co. v. Nesbit, 10 How. 395. See also, Williams v. New Orleans R. Co., 60 Miss. 689. But, in favor of the property owner, an unreasonable delay may constitute an abandonment by implication: Bensley v. Mountain Lake Water Co., 13 Cal. 306. For other cases of constructive abandonment, see State v. Halsted, 39 N. J. L. 640; Breese v. Poole, 16 Ill. App. 551. Costs of discontinuance: North Missouri R. Co. v. Lackland, 25 Mo. 515. The right to abandon proceedings is frequently regulated by statute, and many cases construing these provisions are cited in Lewis Eminent Domain, § 356.

[170] Carson v. City of Hartford, 48 Conn. 68; Graff v. Mayor &c., 10 Md. 544; State v. Graves, 19 Md. 351; Gear v. Dubuque &c. R. Co., 20 Iowa 523; McLaughlin v. Municipality, 5 La. An. 504. See also, Martin v. Mayor, 1 Hill (N. Y.) 545; Feiten v. City of Milwaukee, 47 Wis. 494; s. c. 2 N. W. 1148; Leisse v. St. Louis &c. R. Co., 72 Mo. 561; North Missouri &c. R. Co. v. Lackland, 25 Mo. 515; State v. Waldron, 17 N. J. L. 369.

[171] Bergman v. St. Paul &c. R. Co., 21 Minn. 533.

[172] Lewis Eminent Domain, § 658; citing Pittsburgh &c. R. Co. v. Swinney, 97 Ind. 586; Hullin v. Second Municipality, 11 Rob. (La.) 97; Van Valkenburg v. City of Milwaukee, 43 Wis. 574.

[173] McLaughlin v. Municipality, 5 La. An. 504. Where the proceedings are rightfully discontinued, after award made, the landowner's remedy, if he has any, is by special action for damages and not by mandamus or other action to collect the amount: State v. Graves, 19 Md. 351; Milliard v. City of Lafayette, 5 La. An. 112; In re Canal St., 11 Wend. (N. Y.) 155.

[174] Norris v. Mayor &c., 44 Md. 598, holding that the measure of damages is interest upon the market value of the property for the time the delay was without justifiable excuse.

delay must be culpable or unreasonable, which is a question of fact for the jury.[175] Further than this the courts are not disposed to go.[176]

§ 718. **Compensation.**—Pecuniary compensation must be paid to the person whose property is taken, the amount of which is fixed by inquest before a jury or before commissioners. The compensation must be the full reasonable value of the interest appropriated, and the measure of damages is the market value.[177] In estimating the market value speculative considerations do not have weight unless, in exceptional cases, the probable increase in value from whatever cause can be very clearly proven. But improvements on the property taken may not be disregarded.[178] The market value is usually calculated

[175] Black v. Mayor &c., 50 Md. 235. To the same effect see Leisse v. St. Louis &c. R. Co., 2 Mo. App. Repr. 105; s. c. 5 Mo. App. 585; s. c. affirmed in 72 Mo. 561. See also, Whyte v. City of Kansas, 22 Mo. App. 409.

[176] Carson v. City of Hartford, 48 Conn. 68; Bergman v. St. Paul &c. R. Co., 21 Minn. 533; Van Valkenburg v. City of Milwaukee, 43 Wis. 574; Feiten v. City of Milwaukee, 47 Wis. 494; s. c. 2 N. W. 1148. Martin v. Mayor &c., 1 Hill (N. Y.) 545, decides that there is no action even for unreasonable delay. Where the proceedings are abandoned after award made and subsequently recommenced, it has been held that the first award is binding and a bar to the new proceedings: Rogers v. City of St. Charles, 3 Mo. App. 41. See also, Hupert v. Anderson, 35 Iowa 578. Many statutes now give a right to recover damages upon abandonment. The expression "trouble and expense" is construed in Whitney v. City of Lynn, 122 Mass. 338. See also, Stafford v. Mayor &c., 7 Johns. (N. Y.) 541.

[177] Hill v. Mohawk &c. R. Co., 5 Denio (N. Y.) 206; In re Furman St., 17 Wend. (N. Y.) 649; Lawrence v. City of Boston, 119 Mass. 126; Burt v. Brigham, 117 Mass. 307; Cobb v. City of Boston, 112 Mass. 181; Fall River Works v. City of Fall River, 110 Mass. 428; Edmunds v. City of Boston, 108 Mass. 535; King v. Minneapolis Union R. Co., 32 Minn. 224; s. c. 20 N. W. 135; Jones v. New Orleans &c. R. Co., 70 Ala. 227; Cohen v. St. Louis &c. R. Co., 34 Kan. 158; s. c. 8 Pac. 138; St. Louis &c. R. Co. v. Anderson, 39 Ark. 167; Chicago &c. R. Co. v. Jacobs, 110 Ill. 414; Jacksonville &c. R. Co. v. Walsh, 106 Ill. 253; Sidener v. Essex, 22 Ind. 201; Cummins v. Des Moines &c. R. Co., 63 Iowa 397; s. c. 19 N. W. 268; Bangor &c. R. Co. v. McComb, 60 Maine 290; Fremont &c. R. Co. v. Whalen, 11 Neb. 585; s. c. 10 N. W. 491; Virginia &c. R. Co. v. Elliott, 5 Nev. 358; Pittsburg &c. R. Co. v. Rose, 74 Pa. St. 362; Howard v. City of Providence, 6 R. I. 514; Chapman v. Oshkosh &c. R. Co., 33 Wis. 629; City of Memphis v. Bolton, 9 Heisk. (Tenn.) 508; Ontario &c. R. Co. v. Taylor, 6 Ont. Rep. Q. B. D. 338; Penny v. Penny, 37 L. J. Ch. 340. Witnesses acquainted with the market value may testify to their opinion, though it is said to be the prevailing rule that a witness can not be asked how much damages a party has suffered: Elliott Roads & Streets (2d ed.), § 258, and cases cited.

[178] Jacksonville &c. R. Co. v. Walsh, 106 Ill. 253; Lafayette &c. R. Co. v. Winslow, 66 Ill. 219.

at what the property would "bring in the hands of a prudent seller at liberty to fix the time and the conditions of the sale."[179] And considerations of association or affection are not admitted. In Massachusetts the court held that it was not competent to take into account what the owner would give rather than be turned out of his property.[180] Nor can the fact that the particular lot is absolutely indispensable to the project of the corporation be made an element in its value.[181] But of course the purpose to which property has been put and in view of which improvements have been made is very justly a factor in the case.[182]

§ **719. Elements in estimating compensation.**—The statement that the indispensability of the property to the taker's purposes is not to affect the amount of compensation must be taken with the qualification that where property is found in every way suitable and he seeks to condemn it, although other property could be obtained not quite so conveniently situated, the owner is entitled to the benefit of the suitability in estimating its value. In the case of Boom Co. v. Patterson,[183] the plaintiff, a boom construction company, entitled by law to enter upon and occupy lands necessary properly to conduct its business, sought to acquire a chain of islands in the Mississippi river, very well fitted to form, by connecting their shore line, a boom of great dimensions. The result of the original proceedings was an award of $3,000, from which both parties appealed. Upon a second appraisement the jury assessed the value of the property at $300, but in view of its adaptability for boom purposes they found a further and additional value of $9,058.33. The company contended that the $300 appraisal was all it could be made to pay. Mr. Justice Field, for the court, said: "In determining the value of land appropriated for public purposes the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be, What is the property worth in the market, viewed not merely with reference to the uses to which it is

[179] 6 Am. & Eng. Encyc. of Law 568; citing among other cases, Lawrence v. City of Boston, 119 Mass. 126; City of Memphis v. Bolton, 9 Heisk. (Tenn.) 508; Tufts v. City of Charlestown, 4 Gray (Mass.) 537; Cobb v. City of Boston, 112 Mass. 181.

[180] Tufts v. City of Charlestown, 4 Gray (Mass.) 537.

[181] Virginia &c. R. Co. v. Elliott, 5 Nev. 358; Penny v. Penny, 37 L. J. Ch. 340.

[182] Michigan &c. R. Co. v. Barnes, 44 Mich. 222; s. c. 6 N. W. 651; Price v. Milwaukee &c. R. Co., 27 Wis. 98; Chicago &c. R. Co. v. Jacobs, 110 Ill. 414; Robb v. Maysville &c. Tpk. Co., 3 Met. (Ky.) 117; King v. Minneapolis Union R. Co., 32 Minn. 224; s. c. 20 N. W. 135.

[183] 98 U. S. 403.

at the time applied, but with reference to the uses to which it is plainly adapted; that is to say, what is its worth from its availability for valuable uses? Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use. Others may be able to use it, and make it subserve the necessities or conveniences of life. Its capability of being made thus available gives it a market value which can be readily estimated. * * *" The learned justice goes on to show the adaptability of the islands to the company's purposes, and adds: "Their adaptability for boom purposes was a circumstance, therefore, which the owner had a right to insist upon as an element in estimating the value of his lands."[184]

§ 720. **The same subject continued.**—Some cases go even further and hold that the owner is entitled to the highest price the property will bring for the use to which it may most advantageously be applied.[185] Judge Cooley expresses himself on the subject of compensation as follows: "The principle upon which the damages are to be assessed is always an important consideration in these cases, and the circumstances of different appropriations are sometimes so peculiar that it has been found somewhat difficult to establish a rule that shall always be just and equitable. If the whole of a man's estate is taken there can generally be little difficulty in fixing upon the measure of compensation; for it is apparent that in such a case he ought to have the whole market value of his premises, and he can not reasonably demand more. The question is reduced to one of market value, to be determined upon the testimony of those who have knowledge upon that subject or whose business or experience entitles their opinion to weight. It may be that, in such a case, the market value may not seem to the owner an adequate compensation, for he may have reasons peculiar to himself, springing from asociation or other cause, which make him unwilling to part with the property on the estimate of his neighbors; *but such reasons are incapable of being taken into account in legal proceedings* where the question is one of compensation in money, inasmuch as it is manifestly impossible to measure them by any standard for estimating values which is applied in other cases and

[184] See also, In re Furman St., 17 Wend. (N. Y.) 649; Goodwin v. Cincinnati &c. Canal Co., 18 Ohio St. 169; Young v. Harrison, 17 Ga. 30. That no allowance is to be made for the good will of a business, see Edmunds v. Boston, 108 Mass. 535.

[185] In re Furman Street, 17 Wend. (N. Y.) 649, 650; King v. Minneapolis Union R. Co., 32 Minn. 224; s. c. 20 N. W. 135. See also, as to recovery for incidental injuries to remaining land, Elliott Roads & Streets (2d ed.), § 253.

which necessarily measures the worth of property by its value as an article of sale, or as a means of producing pecuniary returns."[186]

§ 721. **Benefits.**—There is a wide difference of opinion among the courts upon the question whether the damages for the land taken may be offset either wholly or partly by the benefits that accrue to the residue. It is said in a standard treatise that the authorities range themselves under these heads: "1st. Those holding that benefits can not in any case be set off against the injury sustained by the landowner.[187] 2d. Those holding that special benefits may not be set off against the value of the land actually seized, but may be set off against incidental injuries sustained by the landowner.[188] 3d. Those holding that special benefits may be set off against the value of the land as well as against incidental injuries."[189] In all cases the benefits claimed must be special to the particular parcel affected[190] and of a kind not common to the public at large.[191] In several states there are statutory or constitutional provisions forbidding a deduction on account of benefits. In declaring the construction of such an inhibition the court of appeals of New York said: "Whatever land is taken must be paid for by the railroad company at its full market value, and from such value no deduction can be made, although the remainder of the landowner's property may be largely enhanced in value as a result of the operation of the railroad. *But in considering the question of damages to the remainder* of the land not taken, the commissioners must consider the effect of the road upon the whole of that remainder, its advantages and disadvantages, benefits and injuries, and if the result is beneficial there is no damage and nothing can be awarded."[192]

[186] Cooley Const. Lim. (6th ed.) 646, 647.

[187] Elliott Roads & Streets (2d ed.), § 245; citing among other cases, New Orleans &c. R. Co. v. Moye, 39 Miss. 374; City of Memphis v. Bolton, 9 Heisk. (Tenn.) 508; Israel v. Jewett, 29 Iowa 475; Mayor &c. v. Hartridge, 37 Ga. 115.

[188] Citing among other cases, Robbins v. Milwaukee &c. R. Co., 6 Wis. 636; Shipley v. Baltimore &c. R. Co., 34 Md. 336; City Council &c. v. Marks, 50 Ga. 612; City of Shawneetown v. Mason, 82 Ill. 337; Sutton v. City of Louisville, 5 Dana (Ky.) 28.

[189] Citing with other cases, McIntire v. State, 5 Blackf. (Ind.) 384; Putnam v. Douglas Co., 6 Or. 328; s. c. 25 Am. R. 527; Root's Case, 77 Pa. St. 276; Nichols v. City of Bridgeport, 23 Conn. 189. See also, 6 Am. & Eng. Encyc. of Law 581.

[190] Mayor &c. v. Long, 31 Mo. 369; Paducah &c. Co. v. Stovall, 12 Heisk. (Tenn.) 1; Selma &c. R. Co. v. Camp, 45 Ga. 180; Koestenbader v. Price, 41 Iowa 204.

[191] Commissioners &c. v. Johnston, 71 N. C. 398; Meacham v. Fitchburg R. Co., 4 Cush. (Mass.) 291; City of Springfield v. Schmook, 68 Mo. 394; Lipes v. Hand, 104 Ind. 503; s. c. 1 N. E. 871; 4 N. E. 160; Penrice v. Wallis, 37 Miss. 172.

[192] Newman v. Metropolitan &c. R.

§ 722. **Payment.**—Where the constitution does not provide that payment must be made before the property is taken, it need not be given in all cases concurrently in point of time with the actual exercise of the right of eminent domain. It is enough if an adequate and certain remedy is provided whereby the owner of such property may compel payment of his damages.[193] A remedy contingent upon the realization of a fund from taxation for benefits within a limited-assessment district does not meet the requirements of the law.[194] And it is a gross violation of constitutional right to compel the owner of property to resort to a lawsuit in order to recover.[195] Judge Cooley says: "The land should either be his or he should be paid for it. Whenever, therefore, the necessary steps have been taken on the part of the public to select the property to be taken, locate the public work, and declare the appropriation, the owner becomes absolutely entitled to the compensation, whether the public proceed at once to occupy the property or not. If a street is legally established over the land of an individual, he is entitled to demand payment of his damages without waiting for the street to be opened."[196] But where a town was authorized to borrow money by the issue of its bonds, to meet any deficiency in local assessments, and enable payment to be more readily made, the court of appeals of New York held that the provision fur-

Co., 118 N. Y. 618; s. c. 23 N. E. 901. See also, Shipley v. Baltimore &c. R. Co., 34 Md. 336; Wilson v. Rockford &c. R. Co., 59 Ill. 273.

[193] Matter of Petition of United States, 96 N. Y. 227; Bloodgood v. Mohawk &c. R. Co., 18 Wend. (N. Y.) 9; Lyon v. Jerome, 26 Wend. (N. Y.) 485; People v. Hayden, 6 Hill (N. Y.) 359; Rexford v. Knight, 11 N. Y. 308. Cf. 2 Kent Com. 339, n.

[194] Sage v. City of Brooklyn, 89 N. Y. 189; Chapman v. Gates, 54 N. Y. 132; City of Lafayette v. Shultz, 44 Ind. 97; Commissioners &c. v. Durham, 43 Ill. 86.

[195] Even though it be mandamus to compel the appointment of commissioners of appraisal: Shepardson v. Milwaukee &c. R. Co., 6 Wis. 605; Norton v. Peck, 3 Wis. 714. See also, Walther v. Warner, 25 Mo. 277; Henry v. Dubuque, 10 Iowa 540; Wallace v. Karlenoweski, 19 Barb. (N. Y.) 118.

[196] Cooley Const. Lim. (6th ed.) 696; citing City of Philadelphia v. Dickson, 38 Pa. St. 247; City of Philadelphia v. Dyer, 41 Pa. St. 463; Hallock v. Inhabitants &c., 2 Met. (Mass.) 558; Blake v. City of Dubuque, 13 Iowa 66; Higgins v. City of Chicago, 18 Ill. 276; Town of Hampton v. Coffin, 4 N. H. 517; Harrington v. County Com'rs, 22 Pick. (Mass.) 263. See also, City of Chicago v. Barbian, 80 Ill. 482; Elliott Roads & Streets (2d ed.), § 269. Title does not vest until payment: New Orleans &c. R. Co. v. Lagarde, 10 La. An. 150; Gillan v. Hutchinson, 16 Cal. 153. Preliminary surveys are not a taking: Cushman v. Smith, 34 Maine 247; Orr v. Quimby, 54 N. H. 590; Steuart v. Mayor &c., 7 Md. 500.

nished adequate security.[197] Where the statute provides a remedy not obnoxious to the objections suggested, it is only by that means that payment may be enforced.[198] If there be no statutory provision the owner may of course have an action for his money.[199]

§ 723. Review of proceedings—Certiorari.—Where the proceedings are merely erroneous the remedy is usually by certiorari or appeal.[200] A writ of certiorari (when not auxiliary to any other process) is in the nature of a writ of error, addressed to an inferior court or tribunal whose procedure is not according to the course of the common law, After the writ has been issued and the record certified in obedience to it, the court is bound to determine upon an inspection of the whole record whether the proceedings are legal or erroneous; but the granting of the writ in the first instance is not a matter of right and rests in the discretion of the court, and the writ will not be granted unless the petitioner satisfies the court that substantial justice requires it.[201]

[197] In the Matter of Church, 92 N. Y. 1. The Messrs. Elliott, whose opinion is always entitled to weight, do not think this doctrine ought to prevail: Elliott Roads & Streets (2d ed.), § 237.

[198] Calking v. Baldwin, 4 Wend. (N. Y.) 667; Brown v. Beatty, 34 Miss. 227; Dodge v. Essex Co. Com'rs, 3 Met. (Mass.) 380; Lafayette &c. R. Co. v. Smith, 6 Ind. 249; New Albany &c. R. Co. v. Connelly, 7 Ind. 32; Indiana &c. R. Co. v. Oakes, 20 Ind. 9; Mills Eminent Domain, §§ 87, 88; Lewis Eminent Domain, § 608.

[199] Jamison v. City of Springfield, 53 Mo. 224. If the property be taken without payment he may maintain ejectment in Iowa and Mississippi: Daniels v. Chicago &c. R. Co., 35 Iowa 129; Memphis &c. R. Co. v. Payne, 37 Miss. 700. Contra in Arkansas: Cairo &c. R. Co. v. Turner, 31 Ark. 494.

[200] Farmington River &c. Co. v. County Com'rs, 112 Mass. 206. Injunction is not the appropriate remedy: State v. Hanna, 97 Ind. 469; Buckley v. Drake, 41 Hun (N. Y.) 384; Tharp v. Witham, 65 Iowa 566; s. c. 22 N. W. 677. Nor mandamus to compel appointment of new commissioners: State v. Longstreet, 38 N. J. L. 312.

[201] Farmington River &c. Co. v. County Com'rs, 112 Mass. 206; Commonwealth v. Sheldon, 3 Mass. 188; Ex parte Weston, 11 Mass. 417; Lees v. Child, 17 Mass. 351; Freetown v. County Com'rs, 9 Pick. (Mass.) 46; Inhabitants &c. v. County Com'rs, 20 Pick. (Mass.) 71; Gleason v. Sloper, 24 Pick. (Mass.) 181; Inhabitants &c. v. County Com'rs, 5 Gray (Mass.) 451, 453; Ex parte Hitz, 111 U. S. 766; s. c 4 S. Ct. 698; Pickford v. Mayor &c., 98 Mass. 491; City of Charlestown v. Commissioners, 109 Mass. 270; Petition of Landaff, 34 N. H. 163; Tiedt v. Carstensen, 61 Iowa 334; s. c. 16 N. W. 214; Keys v. Marin Co., 42 Cal. 252; Boston &c. R. Co. v. Folsom, 46 N. H. 64. Requisites of petition for certiorari: Chambers v. Lewis, 9 Iowa 583; Vanderstolph v. Highway Com'rs, 50 Mich. 330; s. c. 15 N. W. 495; Richardson v. Smith, 59 N. H. 517; Stokes v. Early, 45 N. J. L. 478. Petitioner must show a special interest: Parnell v. Commissioners, 34 Ala. 278.

The writ lies only to correct errors in law and not to revise a decision of a question of fact upon the evidence introduced at the hearing in the inferior court, or to examine the sufficiency of the evidence to support the finding, unless objection was taken to the evidence for incompetency so as to raise a legal question.[202] Whenever the case was within the jurisdiction of the inferior tribunal, the petitioner for a writ of certiorari can not be permitted to introduce evidence or to contradict or vary its statement, in its record or return, of its proceedings or decision.[203] It is only where extrinsic evidence has been introduced, at the hearing upon the petition, in support of the decision below, and by way of showing that substantial justice does not require the proceedings to be quashed, that like evidence may be introduced by the party petitioning for the writ, and then upon the same point only.[204] The writ must be addressed to the court having the custody and control of the record of the proceedings sought to be quashed.[205] It can only be granted after notice and opportunity to show cause against it, and if granted without such notice will be quashed as improvidently issued.[206] When the proceedings are before county commissioners, notice of the petition should be given to them, the answer or return to the petition must be the joint act of the whole present board and the separate answer of one commissioner can not be received.[207]

§ 724. **The same subject continued—Appeal.**—The right of appeal is purely statutory.[208] The legislature has authority to deny an appeal and to make the decision of the inferior tribunal final and conclusive, or, if appeal is allowed, to declare what questions shall be and what questions shall not be tried on appeal.[209] Ordinarily only parties to

[202] Hayward's Case, 10 Pick. (Mass.) 358; Nightingale's Case, 11 Pick. (Mass.) 168; Stratton v. Commonwealth, 10 Met. (Mass.) 217; Cobb v. Lucas, 15 Pick. (Mass.) 1.

[203] Pond v. Medway, Quincy (Mass.) 193; City of Charlestown v. County Com'rs, 109 Mass. 270; Inhabitants &c. v. County Com'rs, 5 Allen (Mass.) 13.

[204] Inhabitants &c., Petitioner, 6 Pick. (Mass.) 470; Stone v. City of Boston, 2 Met. (Mass.) 220, 228. See further, as to practice upon hearing of petition for certiorari, Farmington River &c. Co. v. County Com'rs, 112 Mass. 206, 215.

[205] Commonwealth v. Winthrop, 10 Mass. 177.

[206] Commonwealth v. Downing, 6 Mass. 72.

[207] Inhabitants &c. v. County Com'rs, 16 Gray (Mass.) 341.

[208] Sims v. Hines, 121 Ind. 534; s. c. 23 N. E. 515.

[209] Matter of State Reservation, 102 N. Y. 734; s. c. 7 N. E. 916; Appeal of Houghton, 42 Cal. 35; Sims v. Hines, 121 Ind. 534; s. c. 23 N. E. 515; State v. Mayor &c., 29 N. J. L. 441; Ricketts v. Village of Hyde Park, 85 Ill. 110; Norfolk &c. R. Co. v. Ely, 95 N. C. 77; Murray v. Tucker, 10 Bush (Ky.) 240; Dough-

the proceedings have the right of appeal.[210] Notice must be given and served as the statute provides.[211] The practice in the appellate court is generally regulated by statute, but in respect of matters not included in the statutory provisions, the general rules of practice in similar cases are adopted.[212] The appeal operates to vacate the decision appealed from,[213] and the case is usually tried de novo in the appellate court.[214]

erty v. Miller, 36 Cal. 83; Emery v. Bradford, 29 Cal. 75; Fass v. Seehawer, 60 Wis. 525; s. c. 19 N. W. 533. Statutes giving appeals are liberally construed so as to embrace condemnation proceedings if possible: Howard v. Drainage Com'rs, 126 Ill. 53; s. c. sub nom. Howard v. Shaw, 18 N. E. 313; Yelton v. Addison, 101 Ind. 58.

[210] Canyonville &c. Road Co. v. Douglass Co., 5 Or. 280; Barr v. Stevens, 1 Bibb (Ky.) 292; Spaulding v. Milwaukee &c. R. Co., 57 Wis. 304; s. c. 14 N. W. 368; 15 N. W. 482. "Persons" includes corporations: People v. May, 27 Barb. (N. Y.) 238.

[211] People v. Lawrence, 54 Barb. (N. Y.) 589; Commissioners &c. v. Claw, 15 Johns. (N. Y.) 537; Klein v. St. Paul &c. R. Co., 30 Minn. 451; s. c. 16 N. W. 265; Waltmeyer v. Wisconsin &c. R. Co., 64 Iowa 688; s. c. 21 N. W. 139. Appearance for the purpose of moving to dismiss is not a waiver of notice: Spurrier v. Wirtner, 48 Iowa 486. See also, People v. Osborn, 20 Wend. (N. Y.) 186.

[212] Elliott Roads & Streets (2d ed.), § 362, and cases there cited; Lewis Eminent Domain, § 540.

[213] Minneapolis &c. R. Co. v. Woodworth, 32 Minn. 452; s. c. 21 N. W. 476.

[214] Hardy v. McKinney, 107 Ind. 364; s. c. 8 N. E. 232; Blize v. Castlio, 8 Mo. App. 290. See also, Rawlings v. Biggs, 85 Ky. 251; s. c. 8 Ky. L. 919; 3 S. W. 147; Kirkpatrick v. Taylor, 118 Ind. 329; s. c. 21 N. E. 20; Davis v. Mayor, 1 Duer (N. Y.) 451.

CHAPTER XVIII.

MUNICIPAL CONTRACTS.

SECTION

725. Municipal contracts—General.
726. Contracts—By whom made.
727. What is municipal contract.
728. Implied contracts.
729. Ratification of contracts.
730. Rescission of contracts.
731. Modification or alteration of contracts.
732. Acceptance of work under contract.
733. Performance of contract.
734. Waiver of performance.
735. Breach of contract—Remedy.
736. Payments on contract.
737. Validity of contracts—General.
738. Contracts which have been held valid.
739. Invalidity of contracts.
740. Construction of contracts.
741. Extras.
742. Exclusive franchises and privileges.
743. Contracts ultra vires.
744. Liability of municipality on contracts.
745. Estoppel.
746. Letting of municipal contracts.

§ **725. Municipal contracts—General.**—While it is not intended, in this connection, to enter into the general subject of the law of contracts, yet it is believed that the subject-matter of municipal contracts is of vital interest, and deserves more than a mere casual treatment such as was given to the subject in the first edition of this work. We have, therefore, rewritten the chapter and endeavored to cover the field of municipal contracts, though in a very condensed form, as developed principally by the decisions rendered since the first edition of this work was published. The general features of the municipal contract are not unlike those of the ordinary contract, and hence will not be considered herein. There are, however, certain matters pertaining to contracts of municipalities, which are unique, and are of special significance and importance to all who have a general, or special, interest in the contractual relationship of this class of corporations.

§ **726. Contracts—By whom made.**—As a general rule all municipal contracts are made by the common council, board of trustees, or other body, by whatever name designated, in whom is vested, by charter or statute, the law-making power of the corporation. By custom, and by reason of the greater facility in the matter of execution, the ministerial and formal execution of contracts is vested in some bureau

or department of the municipality, or in the mayor, or other officer, but their power to act is special and must be found in some formal authority conferred by the council, unless, indeed, the statute or charter confers such authority, which is sometimes done. The legislature has seen proper in some cases to confer upon special boards or bureaus the power of corporate agents to make contracts in relation to certain subjects wholly independent of the council, or authority from it, but such legislation, and contracts thereunder, are contrary to the general rule.[1] Concerning the power of corporate agents to make contracts in behalf of the municipality, it may be stated that their power is special and limited and usually prescribed by the statute or charter. Outside of this scope of authority they have no power to act, and being special agents the general law of agency applies and all persons dealing with them, in the matter of contracts, must do so charged with knowledge of their authority to act, and the scope of their power to bind the corporation.[1a] In addition to this there is also the limitation upon the corporation itself that all its corporate contracts must relate to strictly corporate matters. Where the limitation on the power of the city council to contract appears in the statute or charter knowledge of such limitation will be presumed by the court.[2] Where an agent is em-

[1] Paul v. City of New York, 61 N. Y. S. 570; s. c. 46 App. Div. (N. Y.) 69; Gushee v. City of New York, 56 N. Y. S. 1002; s. c. 26 Misc. (N. Y.) 287. Neither the commissioner of water supply nor the board of public improvements has power under N. Y. laws of 1897, ch. 378, to contract for a supply of water and for furnishing it to the inhabitants without authority conferred by previous legislation by the municipality: Press Pub. Co. v. Holahan, 62 N. Y. S. 872; s. c. 29 Misc. (N. Y.) 684. Cf. Woodruff v. Catlin, 54 Conn. 277; s. c. 6 Atl. 849; New York &c. R. Co. v. Bristol, 151 U. S. 556; s. c. 14 S. Ct. 437; Mooney v. Clark, 69 Conn. 241; s. c. 37 Atl. 596, 1080. Where a special act empowers a special commission to act for a city in making an agreement with a railroad company in reference to abolishing grade crossings and apportion the cost between the city and company providing that such agreement when approved by the board of railroad commissioners shall be final and conclusive on the parties, a contract so made is binding on the parties, though not authorized by the city or ratified by the council: New York &c. R. Co. v. Wheeler, 72 Conn. 481; s. c. 45 Atl. 14. The

[1a] Condran v. City of New Orleans, 43 La. An. 1202 (mem.); s. c. 9 So. 31; Burchfield v. City of New Orleans, 42 La. An. 235; s. c. 7 So. 448; Fox v. Sloo, 10 La. An. 11; Ross v. City of Philadelphia, 115 Pa. St. 222; s. c. 8 Atl. 398.

[2] Black v. Common Council &c., 119 Mich. 571; s. c. 78 N. W. 660. In all cases where authority is conferred by statute upon an agent a person dealing with such agent is bound to ascertain the nature and

ployed by a municipality to make a contract, as is frequently necessary to do, it is necessary that his authority to contract shall appear of record, and thereby appear as part of the council proceedings.[3] Sometimes in the administration of municipal affairs the council finds it necessary to delegate to a committee power to make a contract, but such power must be embodied in an ordinance and the details as to scope, etc., fixed as far as possible.[4] Where the contract is made by a committee, and reported to the council, the action of the committee should be ratified by the council, and thus become the act of the council itself. In such case the power of the committee being delegated power it follows that the committee can not delegate its power to a subcommittee.[5] A contract may also be made by a board and be ratified by the council in a case where the council originally had power to make such contract.[6] But where a board is authorized by statute, as in cases of public improvements, to advertise for bids, open and approve

extent of his authority: Town of Madison v. Newsome, 39 Fla. 149; s. c. 22 So. 270. And in dealing with a city treasurer parties are charged with notice that he has no power to issue city warrants: Bardsley v. Sternberg, 17 Wash. 243; s. c. 49 Pac. 499. A contractor entering into a contract with a municipality does so with knowledge of the limitations upon the power of the municipality: Santa Cruz Rock Pavement Co. v. Broderick, 113 Cal. 628; s. c. 45 Pac. 863; McAleer v. Angell, 19 R. I. 688; s. c. 36 Atl. 588; Osgood v. City of Boston, 165 Mass. 281; s. c. 43 N. E. 108. The rule is universal and general that persons contracting with a municipal corporation must inquire into the power of the corporation or its officers to make the contract: State v. Minnesota &c. R. Co., 80 Minn. 108; s. c. 83 N. W. 32. Cf. City of Chicago v. Williams, 182 Ill. 135; s. c. 55 N. E. 123; Kerr v. City of Bellefontaine, 59 Ohio St. 446; s. c. 52 N. E. 1024.

[3] Where an agent is employed to make a contract on behalf of a municipality for a street improvement his authority must appear of record: Barker v. Southern Const. Co., 20 Ky. L. 796; s. c. 47 S. W. 608.

[4] A committee of the council may, by ordinance, be authorized to make a contract for street improvement: Reuting v. City of Titusville, 175 Pa. St. 512; s. c. 34 Atl. 916.

[5] A part of the members of a committee by their separate action, not at a meeting of the committee, can not set aside the formal action of the committee as a whole: Murdough v. Inhabitants &c., 165 Mass. 109; s. c. 42 N. E. 502; Shea v. Milford, 145 Mass. 528; s. c. 14 N. E. 764.

[6] The test as to the power of a municipal corporation to make a contract is to be determined by the fact as to whether it is for the general good of all the inhabitants: Sun Printing &c. Ass'n v. Mayor &c., 40 N. Y. S. 607; s. c. 8 App. Div. (N. Y.) 230; Hill v. City of Indianapolis, 92 Fed. 467. Where an act creating a city board is held to be unconstitutional the contracts of such

the same, and let contracts, the council has no power to interfere in any manner with the making of the contract, the discretion of the board, or any of the details, although the improvement is beneficial to the city and the duty of paying therefor devolves upon it.[7] The power to make contracts in behalf of and binding on the municipality by other than the city council is exceptional and special, the general rule being that a contract must be made either by the council, or under its authority and direction, and in the latter case the act is ministerial.[8] A contract may be based upon a petition of taxpayers, or even upon a vote of the electors; nevertheless, it is the contract of the municipality.[9] The contract, and particularly so if in regard to public improvements, involving large deferred payments, should be by ordinance duly enacted, in which all formalities are complied with.[10] And the minutes of the council are the best proof of the contract, but not the only proof.[11]

§ 727. **What is a municipal contract.**—A franchise to a railroad company by a municipality based on valuable privileges given the latter which are lived up to by the former constitutes a contract which can not be violated by the city.[12] Where a specification for a

board are not binding on the city: City of Findlay v. Pendleton, 62 Ohio St. 80; s. c. 56 N. E. 649.

[7] Moran v. Thompson, 20 Wash. 525; s. c. 56 Pac. 29. Where the charter gives the mayor and council ample power and control over the streets and general power to construct, pave and keep them in repair, they may exercise discretion in matters of detail: Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939. A statute providing for the incorporation of water companies and prohibiting municipalities from making contracts depriving themselves of the right to regulate the rates does not apply to contracts with individuals: Los Angeles City Water-Works Co. v. City of Los Angeles, 88 Fed. 720.

[8] Neither the commissioner of public works nor the mayor, or both, can make a contract without authority from the council: City of Chicago v. Frazer, 60 Ill. App. 404; People v. Town, 37 N. Y. S. 864; s. c. 1 App. Div. (N. Y.) 127. Additional water supply can only be procured in the city of New York from action of the municipal assembly: Keator v. Dalton, 62 N. Y. S. 878; s. c. 29 Misc. (N. Y.) 692. A contract signed by the mayor, under seal of the city, which recites that the name of the city is thereto subscribed, binds the city: Fehler v. Gosnell, 99 Ky. 380; s. c. 35 S. W. 1125; 18 Ky. L. 238.

[9] Board &c. v. National Life Ins. Co., 90 Fed. 228.

[10] Noel v. City of San Antonio, 11 Tex. Civ. App. 580; s. c. 33 S. W. 263.

[11] In the absence of minutes, parol proof is admissible: City of Belton v. Sterling (Tex.), 50 S. W. 1027. Utah Rev. St. 1898, ch. 13, §§ 283, 286, repeals Rev. St. 1898, § 206, subsecs. 36, 76, in reference to the power to make contracts: Neiden v. Clark, 20 Utah 382; s. c. 59 Pac. 524.

[12] Western Union Tel. Co. v. City of Syracuse, 53 N. Y. S. 690; s. c. 24 Misc. (N. Y.) 338.

public improvement fully describes the work to be done, and a bid is made thereon for such work in writing and it is accepted and entered of record it constitutes between the city and the contractor a valid contract.[13] But it is not absolutely essential, however desirable, that the contract shall be in writing, although the charter so requires. Thus where the contract was verbal and was fully performed on the part of the contractor he was permitted to recover.[14] Neither the municipal charter, nor a statute purporting to regulate the use of property held by a public corporation for governmental or public purposes, is a contract.[15] A resolution by the city council passed pending an injunction proceeding in which it is provided that a proposed draft of the contract be approved, and its execution agreed upon, to be performed as soon as the council shall be free to act, is not a contract.[16] A resolution of the council that the mayor be instructed to purchase certain property for a certain sum and on certain conditions is not on its face a contract of purchase.[17]

§ 728. **Implied contracts.**—A municipality may be bound by an implied contract, concerning a matter about which it would be authorized to contract, to the same extent as an individual.[18] In other words, where a municipality is authorized to contract it may be made liable under an implied contract.[19] But a contract will not be implied where goods have been ordered by one employe, and accepted by another, without authority, and used by him.[20] Where a person is compelled by municipal officers to perform labor for the municipality under a judgment which is void he may recover the value of his services.[21] A city is not liable to a person who volunteers services.[22] Nor is it liable on an implied contract for the temporary use of a hose which belongs to an individual but was used under the supposition that it belonged to the city.[23]

[13] City of Fort Madison v. Moore, 109 Iowa 476; s. c. 80 N. W. 527.

[14] North River Electric &c. Co. v. City of New York, 62 N. Y. S. 726; s. c. 48 App. Div. (N. Y.) 14.

[15] Covington v. Kentucky, 173 U. S. 231; s. c. 19 S. Ct. 383.

[16] State v. Noyes, 25 Nev. 31; s. c. 56 Pac. 946.

[17] Carskaddon v. City of South Bend, 141 Ind. 596; s. c. 39 N. E. 667; 41 N. E. 1.

[18] Brush Electric &c. Co. v. City Council &c., 114 Ala. 433; s. c. 21 So. 960.

[19] Buck v. City of Eureka, 124 Cal. 61; s. c. 56 Pac. 612.

[20] New Jersey Car Spring &c. Co. v. City of Jersey City (N. J.), 46 Atl. 649.

[21] Fox v. City of Richmond, 19 Ky. L. 326; s. c. 40 S. W. 251.

[22] Lydecker v. Village of Nyack, 39 N. Y. S. 509; s. c. 6 App. Div. (N. Y.) 90.

[23] Dolloff v. Inhabitants &c., 162 Mass. 569; s. c. 39 N. E. 191.

§ 729. Ratification of contracts.—A contract that is within the scope of the city's power, but irregular in that it was made by resolution instead of ordinance, may be ratified by a subsequent ordinance without a new consideration.[24] An so where officers of a corporation execute a contract in behalf of the city which they were not authorized to execute but which should have been executed by another officer the city council by an ordinance duly passed may ratify the contract.[25] Likewise a contract which has been improperly executed may be ratified by the departments which have general powers over such matters, where the city has had the benefit of the contract performed in good faith.[26] Where a contract is invalid by reason of some irregularity, that does not go to the subject-matter, it may be the subject of ratification in so far as it has been executed,[27] but if it is void for noncompliance with statutory requirements it can not be ratified, the requirements being mandatory,[28] nor can a contract which is ultra vires be ratified.[29] Neither does the attempted ratification of a void contract work an estoppel against the city. Thus where the board of supervisors of a city and county authorize the payment of a demand under a void contract, in such case the board having no power to make the contract it can have no power to order payment.[30] Where a contract made by a water board is outside of the scope of its powers it may be rendered valid by a ratification of the council,[31] for a city like an individual may ratify the acts of its agent provided the contract is not itself unlawful,[32] and where original power existed a city council may ratify the unauthorized act of another.[33] So where

[24] State v. Cowgill &c. Mill Co., 156 Mo. 620; s. c. 57 S. W. 1008.

[25] City of Chicago v. Galpin, 183 Ill. 399; s. c. 55 N. E. 731.

[26] North River Electric &c. Co. v. City of New York, 62 N. Y. S. 726; s. c. 48 App. Div. (N. Y.) 14. Cf. Port Jervis Water-Works Co. v. Village of Port Jervis, 151 N. Y. 111; s. c. 45 N. E. 388.

[27] Frederick v. People, 83 Ill. App. 89.

[28] City of Indianapolis v. Mann, 144 Ind. 175; s. c. 42 N. E. 901.

[29] Ellis v. City of Cleburne (Tex. Civ. App.), 35 S. W. 495.

[30] Santa Cruz Rock Pavement Co. v. Broderick, 113 Cal. 628; s. c. 45 Pac. 863. Where the charter provides that all contracts recommended by the board of public works must receive the ratification of the council the board has no power to provide in the contract that alterations in the work shall be added to or deducted from the original contract price: Chittenden v. City of Lansing, 120 Mich. 539; s. c. 79 N. W. 797.

[31] Roberts v. City of Cambridge, 164 Mass. 176; s. c. 41 N. E. 230.

[32] City of Findlay v. Pertz, 66 Fed. 427; s. c. 13 C. C. A. 559.

[33] Koch v. City of Milwaukee, 89 Wis. 220; s. c. 62 N. W. 918; Davis v. Mayor &c., 61 Mich. 530; s. c. 28 N. W. 526; 1 Dillon Munic. Corp., § 463; People v. Swift, 31 Cal. 26; Blen v. Bear River Co., 20 Cal. 602; San Francisco Gas Co. v. City of San Francisco, 9 Cal. 453; Hoyt v. Thompson, 19 N. Y. 207, 218; Clarke

the city has undertaken to delegate power to an agent but the delegation was unauthorized, the acts themselves may be ratified.[34] A contract may be ratified by a statute conferring on a municipality power to enter into a contract previously made without such authority, and the ratification is of the date of the approval,[35] but a ratification by the legislature does not ratify a fraud inherent in the contract and not disclosed to the legislature,[36] nor does it ratify a contract made in violation of an existing statute.[37] Where a corporation is empowered to contract for the purchase of goods, it may bind itself by an original contract, or the purchase may be ratified by an acceptance and use, or directing payment.[38] It is not necessary that there shall be a formal ratification; as, where services were rendered at the request of the president of the board of trustees, which the corporation subsequently accepted and agreed to pay for.[39] An action of a city to enforce an assessment is a ratification of the contract on which it is based.[40] A ratification, by a vote of the electors, does not validate

v. Lyon Co., 8 Nev. 181; Howe v. Keeler, 27 Conn. 538; Emerson v. Inhabitants &c., 13 Pick. (Mass.) 377; Hodges v. Buffalo, 2 Denio (N. Y.) 110; People v. Flagg, 17 N. Y. 584; s. c. 16 How. Pr. (N. Y.) 36; Brady v. Mayor &c., 20 N. Y. 312; Delafield v. Illinois, 2 Hill (N. Y.) 159, 176; s. c. 8 Paige (N. Y.) 527; 26 Wend. (N. Y.) 192; Mills v. Gleason, 11 Wis. 470; s. c. 8 Am. Law. Reg. 693; Dubuque Female College v. District Tp. &c., 13 Iowa 555; Merrick v. Burlington &c. Road Co., 11 Iowa 74; Mayor &c. v. Jackson, 1 Doug. (Mich.) 106; Crawshaw v. City of Roxbury, 7 Gray (Mass.) 374; Burrill v. City of Boston, 2 Cliff. 590; Albany Nat'l Bank v. City of Albany, 92 N. Y. 363; City of Galveston v. Morton, 58 Tex. 409; Strong v. District of Columbia, 1 Mackey 265; Town of Durango v. Pennington, 8 Colo. 257; s. c. 7 Pac. 14; Town of Bruce v. Dickey, 116 Ill. 527; s. c. 6 N. E. 435; Board &c. v. Hinchman, 31 Kan. 729; s. c. 3 Pac. 504; Lincoln v. Inhabitants &c., 75 Maine 141; Schmidt v. Stearns Co., 34 Minn. 112; s. c. 24 N. W. 358; Kingsley v. Norris, 60 N. H. 131.

[34] Naegely v. City of Saginaw, 101 Mich. 532; s. c. 60 N. W. 46.

[35] Chesapeake &c. Tel. Co. v. Mayor &c., 89 Md. 689; s. c. 43 Atl. 784; 44 Atl. 1033.

[36] Santa Ana Water Co. v. Town of Buenaventura, 65 Fed. 323.

[37] Board &c. v. Mayor &c., 57 N. J. L. 452; s. c. 31 Atl. 625. A law may legalize a contract between a city and a railroad company since the legislature may confer such power by retrospective action: Weed v. Common Council &c., 56 N. Y. S. 105; s. c. 26 Misc. (N. Y.) 208. The defects in the preliminary proceedings incident to the making of the contract may be remedied by a curative act, but this does not necessarily render the contract itself valid: Windsor v. City of Des Moines, 110 Iowa 175; s. c. 81 N. W. 476.

[38] New Jersey Car Spring &c. Co. v. City of Jersey City (N. J.), 46 Atl. 649.

[39] Kents v. Village of North Tarrytown, 64 N. Y. S. 178; s. c. 50 App. Div. (N. Y.) 502.

[40] City of Harrisburg v. Shepler, 190 Pa. St. 374; s. c. 42 Atl. 893.

a contract as of the time it was made, but only from the time of ratification.[41]

§ 730. **Rescission of contracts.**—Contracts by a municipality are in the exercise of proprietary or business powers and are governed by the rules applicable to other contracts, and when without fraud and fairly made on the part of the contractor and without bad faith or misconduct on the part of the city officials, and not unreasonable, can not be repudiated by the city after performance or part performance by the contractor.[42] A court will not cancel a municipal contract upon the ground that the city made a bad bargain, paid more than the property was worth, and that the council's action was dictated by improper motives.[43] A contract entered into by a city can not be rescinded by verbal instructions given by members of the council. The corporation alone can discontinue a contract, and such discontinuance is proved by the written minutes and records of the council;[44] and in such case the entry in the minutes of the council that a claim was disallowed and the mayor instructed to inform the claimant that the claim would not be paid for the reason that the company had not performed its contract is not a discontinuance of the contract, as to future accruing claims under the contract.[45] After a contract has become binding it can not be rescinded by one without the consent of the other party.[46] A municipal corporation can not avoid a contract that has been ratified by the electors after it has been accepted and performed by the company and has been complied with by the city for a number of years, on the ground of irregularity in the election.[47] A right of revocation in the city if the other party fails to fulfill the contract may be exercised by the city when sufficient grounds exist therefor, and a prima facie presumption may be indulged that the revocation is on good grounds.[48] The use of water by the city under a rescinded contract will render the city liable for the

Where a committee was authorized to make a particular contract it may, by a subsequent vote, ratify a contract made by its chairman and the engineer: May v. City of Gloucester, 174 Mass. 583; s. c. 55 N. E. 465.

[41] Squire v. Preston, 31 N. Y. S. 174; s. c. 82 Hun (N. Y.) 83.

[42] Little Falls Electric &c. Co. v. City of Little Falls, 102 Fed. 663.

[43] New Orleans v. Warner, 175 U. S. 120; s. c. 20 S. Ct. 44.

[44] City of Greenville v. Greenville Water Works Co., 125 Ala. 625; s. c. 27 So. 764.

[45] City of Greenville v. Greenville Water Works Co., 125 Ala. 625; s. c. 27 So. 764.

[46] Hudson Electric L. Co. v. Inhabitants &c., 163 Mass. 346; s. c. 40 N. E. 109.

[47] Cribs v. City of Lebanon, 98 Fed. 549.

[48] City of Newport v. Phillips, 19 Ky. L. 352; s. c. 40 S. W. 378.

water so furnished.[49] The trustees of a corporation are not required to exercise diligence to obtain information concerning the nature or cost of work for the benefit of bidders, and where no fraud is imputed to the trustees a contractor is not entitled to a rescission because the work is more difficult than he was expecting from the profile and data in the engineer's office, or because some of the trustees knew, or should have known, of the existence of information they did not communicate to the contractor.[50] The abandonment of a contract induced by the fraud of the deputy comptroller does not render the city liable to an assignee of the contractor.[51] An action against the city can not be maintained to recover money on the contract after its revocation. The action is for a breach of the contract.[52] A bridge erected as part of a street-improvement under an authorized contract can not be removed by the contractor unless it can be done without injuring the foundation and unless he refunds what has been paid to him.[53]

§ 731. **Modification or alteration of contracts.**—Where two municipalities are authorized to contract with each other, and there is no limitation placed on that power, they may make any reasonable modification of such contract, or substitute a new contract in place of the old one.[54] Generally speaking, it is within the power of the city to provide in the contract for changes or modifications thereof if they are made in good faith, honestly, and for the benefit of the city.[55] The general rule is that the motives of the council are not the subject of review by the courts, but a resolution of a council waiving a requirement in a contract for a public improvement is administrative in its character and hence the motives which induced its passage are proper subjects of judicial investigation.[56] A contract can only be modified by the body which was authorized to make it. Thus a con-

[49] United States Water Works Co. v. Borough of Du Bois, 176 Pa. St. 439; s. c. 35 Atl. 251.

[50] Sanitary Dist. &c. v. Ricker, 91 Fed. 833.

[51] Jones v. Savage, 53 N. Y. S. 308; s. c. 24 Misc. (N. Y.) 158. A contract will not be canceled for fraud on the part of municipal officers at the suit of a taxpayer where the contractor did not participate in the fraud and where the contract was let in accordance with the charter: Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939.

[52] City of Newport v. Phillips, 19 Ky. L. 352; s. c. 40 S. W. 378.

[53] Berlin Iron-Bridge Co. v. City of San Antonio, 92 Tex. 388; s. c. 50 S. W. 408.

[54] Arnold v. Mayor &c., 21 R. I. 15; s. c. 41 Atl. 576.

[55] Filbert v. City of Philadelphia, 181 Pa. St. 530; s. c. 37 Atl. 545; Weston v. City of Syracuse, 31 N. Y. S. 186; s. c. 82 Hun (N. Y.) 67.

[56] Weston v. City of Syracuse, 158 N. Y. 274; s. c. 53 N. E. 12.

tract subject to the approval of the council can not be altered without its consent and approval.[57] Where it is necessary that an ordinance shall be ratified by a popular vote in order to the creation of an indebtedness, the proposition, as ratified, will control a schedule made by the company and city officials.[58] A contract having been made granting rights and franchises can not be modified by subsequent ordinances limiting the rights theretofore granted, where it is not a valid exercise of police power.[59]

§ 732. Acceptance of work under contract.—The acceptance of work under a contract within a specified time is immaterial, where the city permits expenditures under the contract and performance under it for several years.[60] In other words the acceptance may be implied. Thus where the contract requires the work when completed to be accepted by the city, actual use of the improvement after completion will operate as an estoppel on the city from urging as a defense the non-acceptance.[61] Fraud on the part of the contractor in the performance of the work, and failure on the part of the proper city officials to discover, and have rectified, the fraudulent work, vitiates the acceptance of such part of the work and renders an assessment void on abutting property.[62] But in the absence of fraud, the acceptance of work when property-owners have had an opportunity to be heard, is conclusive.[63] The employment by a contractor of members of the city council to superintend the improvement, and by such employment procuring the acceptance of work not in compliance with the contract, is a fraud upon the property-owners and ground for resisting an assessment.[64] Where material used has passed inspection and is equal to samples furnished, but the work, as a whole, has not been accepted, the contractor is liable for the loss occasioned by the use of

[57] Campau v. City of Detroit, 106 Mich. 414; s. c. 64 N. W. 336.

[58] Tacoma Light &c. Co. v. City of Tacoma, 13 Wash. 115; s. c. 42 Pac. 533.

[59] City of Indianapolis v. Consumers' Gas &c. Co., 140 Ind. 107; s. c. 39 N. E. 433.

[60] State v. Mayor &c., 19 Mont. 518; s. c. 49 Pac. 15.

[61] Neosho City Water Co. v. City of Neosho, 136 Mo. 498; s. c. 38 S. W. 89.

[62] Mason v. City of Des Moines, 108 Iowa 658; s. c. 79 N. W. 389.

[63] Green v. Shanklin, 24 Ind. App. 608; s. c. 57 N. E. 269. Nor is the assessment in such case void for delegating to the contractor power to determine where good walks exist and where the sidewalk should be built.

[64] Green v. Shanklin, 24 Ind. App. 608; s. c. 57 N. E. 269.

material not in compliance with the contract.[65] The city has no right to accept part performance of a contract for an entire improvement.[66]

§ 733. **Performance of contract.**—Where the statute requires a street-improvement contract shall fix a time when the work shall be commenced and when completed, and the contract specifies that work shall be commenced within ten days and completed within two hundred and forty days thereafter it is a sufficient compliance.[67] The city and not the individual property-owner is the judge whether the contract is complied with, and unless there is a fraudulent abuse of the power the property-owner is concluded. In case of fraud equity is the proper remedy.[68] Where the certificate of the city engineer is made final and conclusive by the contract as to the amount of work done and materials furnished, such certificate, in the absence of bad faith, or misconstruction by the engineer, will be binding.[69] A guaranty

[65] Goswell v. City of Louisville (Ky.), 57 S. W. 476.

[66] Berwind v. Galveston &c. Ins. Co., 20 Tex. Civ. App. 426; s. c. 50 S. W. 413.

[67] Rannsh v. Hartwell, 126 Cal. 443. Where an ordinance designated a sidewalk 20 feet wide, and that constructed was 19 feet and 7 inches, the stone curbing being 5 inches wide, it is a sufficient compliance where the pavement is paid for by the square foot: Middlesborough Town &c. Co. v. Knoll, 21 Ky. L. 1399; s. c. 55 S. W. 205. A slight variance in the performance of a contract from its requirements resulting in no injury to the improvement and no increased cost is not ground for restraining the payment of the contract price at the suit of an abutting property owner: McCartan v. Inhabitants &c., 57 N. J. Eq. 571; s. c. 41 Atl. 830.

[68] People v. McWhethy, 177 Ill. 334; s. c. 52 N. E. 479; Ricketts v. Village of Hyde Park, 85 Ill. 110; Haley v. City of Alton, 152 Ill. 113; s. c. 38 N. E. 750. Where the means of payment under a contract, guaranteed by the city, have failed, as in case of a paving contract, where part was payable by property owners, and the failure can not be attributed to the city contractor, the city is liable: Cole v. City of Shreveport, 41 La. An. 839; s. c. 6 So. 688, affirming a judgment in favor of the contractors for a balance due on a paving contract which was made with the understanding that the owners of land fronting on the street were bound for a portion of the cost, and the city guaranteeing the payment of the same by appropriation of wharfage dues which by legislation afterwards it could not use in that way. The court approved and followed Hitchcock v. Galveston, 96 U. S. 341. A contract to furnish electric lighting but not specifying any particular source may be enforced although the contractor has sold and removed his own plant and furnishes light from the plant of another: Town of Colorado City v. Townsend, 9 Colo. App. 249; s. c. 47 Pac. 665. Where an ordinance and specifications called for a specified material, and the contract referred to the ordinance and specifications, both of them were held to be binding on the contractor: Dunn v. McNeely, 75 Mo. App. 217.

[69] Smith v. Mayor &c., 42 N. Y. S. 522; s. c. 12 App. Div. (N. Y.) 391. But see Quinn v. Mayor &c., 45 N. Y. S. 7; s. c. 16 App. Div. (N. Y.) 408.

of performance may be special and not general, as where a contractor guarantees to make all repairs which may become necessary from any imperfection in the work or material within a specified period. Such guaranty is not to be construed as a guaranty to repair irrespective of the causes.[70] And so where a guaranty was for a period of five years against all defects due to proper use it was not held a guaranty for all future repairs but a guaranty of substantial compliance with the terms of the contract.[71] The performance of a contract by a contractor does not entitle him to his money where as a condition precedent to the making of the contract a certificate of the auditor that the money required is in the treasury to the credit of the fund has not been filed and recorded, and the city is not liable.[72] Where the city receives the benefit of a part performance of a contract with knowledge of the non-performance of the remainder it is liable for the part performed.[73]

§ 734. **Waiver of performance.**—Where the details of the construction of a public work are left to the council by the charter it is within the power of the council to waive performance of the contract, in so far as work done has not been in compliance with the contract, where the consent of property-owners is not based on the contract as made.[74] A waiver of compliance with a contract may be implied, as where a contract called for water of good quality to be furnished and the city continued to audit the bills and use the water.[75] But

[70] City of Kansas City v. Hanson, 60 Kan. 833; s. c. 58 Pac. 474.

[71] Allen v. City of Portland, 35 Or. 420; s. c. 58 Pac. 509.

[72] Comstock v. Incorporated Village of Nelsonville, 61 Ohio St. 288; s. c. 56 N. E. 15.

[73] Sykes v. City of St. Cloud, 60 Minn. 442; s. c. 62 N. W. 613. Under an agreement by which the city covenanted that it had not done, and would not do, anything to delay the contractor, and there was discovered, as the work progressed, an obstruction which existed by permission of the city and not removable by the contractor, it was the duty of the city to remove it after notice from the contractor or provide for the protection of the contractor: Mairs v. Mayor &c., 62 N. Y. S. 351; s. c. 30 Misc. (N. Y.) 384. A contract providing for delays includes delays occasioned by injunction: Whittemore v. Sills, 76 Mo. App. 248. There is no right to abrogate a contract on the ground of unnecessary delay in completion of work by a contractor where the city has been remiss in complying with the requirements of the contract where the contract is highly penal: Mayor &c. v. Reilly, 59 Hun (N. Y.) 501; s. c. 13 N. Y. S. 521.

[74] Weston v. City of Syracuse, 158 N. Y. 274; s. c. 53 N. E. 12; Meech v. City of Buffalo, 29 N. Y. 198; Moore v. City of Albany, 98 N. Y. 396; Voght v. City of Buffalo, 133 N. Y. 463; s. c. 31 N. E. 340.

[75] Creston Waterworks Co. v. City of Creston, 101 Iowa 687; s. c. 70 N. W. 739.

payments on account on certificates of the engineer do not waive the terms of a written contract in the absence of evidence that such was the intention on the part of the council.[76]

§ 735. **Breach of contract—Remedy.**—Although the contract provides that no payment shall be made upon it until the cash has been collected by assessment, yet where the municipality formally declares that the contract has been abandoned and refuses to levy an assessment to pay the contract price the contractor may sue for a breach of such contract.[77] A contract will not be enjoined in its execution because of irregularities in advertising for proposals; as where the advertisement is by the board of public safety instead of the department of public works.[78] A refusal on the part of a city comptroller and deputy to pay instalments, and a denial by them of the city's liability, is a breach of the contract.[79] Proof of the ordinance, the contract, performance, acceptance of work, issuance of warrant and failure for four years to provide a fund from which to pay constitutes a prima facie case against the city, and the burden is then upon the city to show as a defense that a failure to provide the necessary funds was not owing to its neglect in complying with the charter or in exercising reasonable diligence.[80] The waiver of liquidated damages based on delay in the work, is not to be construed as an admission by the city of its responsibility for the delay.[81]

§ 736. **Payments on contract.**—Where the method of payment is prescribed by contract or by statute that method must be strictly pursued. And so where, by the contract, no payment is to be made until

[76] Dougherty v. Borough of Norwood, 196 Pa. St. 92; s. c. 46 Atl. 384. Cf. St. Paul Gaslight Co. v. City of St. Paul, 78 Minn. 39; s. c. 80 N. W. 774, 877. A vote by a town to pay a judgment rendered on a contract, when not a waiver of the town's rights,—see Town of Grand Isle v. Kinney, 70 Vt. 381; s. c. 41 Atl. 130.

[77] Weston v. City of Syracuse, 158 N. Y. 274; s. c. 53 N. E. 12.

[78] Potts v. Philadelphia, 195 Pa. St. 619; s. c. 46 Atl. 195.

[79] Jones v. City of New York, 62 N. Y. S. 284; s. c. 47 App. Div. (N. Y.) 39.

[80] Jones v. City of Portland, 35 Or. 512; s. c. 58 Pac. 657.

[81] Mairs v. City of New York, 65 N. Y. S. 160; s. c. 52 App. Div. (N. Y.) 343. The non-enforcement of a penalty in a contract by the city council is not a defense to an assessment, such penalty having no relation to the assessment and not being provided by law: Cass Farm Co. v. City of Detroit, 124 Mich. 433; s. c. 83 N. W. 108. La. act No. 133 of 1888 for the specific enforcement of contracts furnishes cities a more summary remedy against private corporations for the enforcement of contracts than previously existing: State v. New Orleans &c. R. Co., 52 La. An. 1570; s. c. 28 So. 111.

the cost of the work has been ascertained, and assessed upon, and collected from the taxpayers this is a condition precedent to an action to recover payment. The remedy is mandamus.[82] A contract by a city with a water company that is fair and reasonable, in the matter of payment or compensation may be made to depend upon the amount of tax assessed against the water company for municipal purposes.[83] A contractor may enforce payment from a fund derived from the sale of bonds issued for the construction of the work although the ordinance provides for the payment out of funds derived from general taxation.[84] Under a statute giving cities and villages power to make local improvements by special assessment or by special taxation, or both, of contiguous property, or by general taxation or otherwise as they shall prescribe by ordinance, and the improvement is one properly chargeable against abutting property, the decision of the city council is final, and a contractor is not entitled to be paid from the general taxation.[85] Where a contract provides that payment under the contract shall not be made until the work is completed according to agreement and the completion certified by specified officers the certificate does not estop the city from showing the correct amount and character of the work and the incorrectness of the certificate.[86] An improvement made and guaranteed for five years on which certificates are issued whenever two blocks are completed and certified to is to be paid for in cash when the city makes appropriations, and not at the end of five years.[87] A contract by which the city agrees to pay ninety per cent. of the estimated amount of work done for the preceding month means for all materials furnished in the preceding month though not put in place.[88] Where there are constitutional limitations as to the amount of municipal indebtedness a contract may be made payable in annual instalments if such instalments are within the constitutional limits.[89]

[82] Weston v. City of Syracuse, 158 N. Y. 274; s. c. 53 N. E. 12; People v. Mayor &c., 144 N. Y. 63; s. c. 38 N. E. 1006; Howell v. City of Buffalo, 15 N. Y. 512; Baldwin v. City of Oswego, 1 Abb. Ch. App. Dec. (N. Y.) 62; Beard v. City of Brooklyn, 31 Barb. (N. Y.) 142; Dannot v. Mayor, 66 N. Y. 585; Hunt v. City of Utica, 18 N. Y. 442.

[83] Maine Water Co. v. City of Waterville, 93 Maine 586; s. c. 45 Atl. 830.

[84] First Nat'l Bank v. Keith, 183 Ill. 475; s. c. 56 N. E. 179.

[85] City of Pontiac v. Talbot Pav. Co., 94 Fed. 65; s. c. 36 C. C. A. 88.

[86] Dean v. City of New York, 61 N. Y. S. 374; s. c. 45 App. Div. (N. Y.) 605.

[87] State v. City of New Orleans, 51 La. An. 699; s. c. 25 So. 421.

[88] Delafield v. Village of Westfeld, 58 N. Y. S. 277; s. c. 41 App. Div. (N. Y.) 24.

[89] McBean v. City of Fresno, 112 Cal. 159; s. c. 44 Pac. 358.

§ 737. Validty of contracts—General.—The validity of ordinances, when contracts, has been treated in Chapter XIV,[89a] and will not be repeated in this connection. It may be stated generally that the contract must relate to a subject-matter within the scope of the contractual powers of the municipality. It must not be in contravention of the constitution, the general statutes or the municipal charter, and not contrary to public policy. Where the charter, or other law governing the subject, has prescribed certain preliminary steps, in relation to the making of contracts, which are mandatory, these conditions precedent are to be carefully observed. Where the charter makes an ordinance effective unless vetoed in a given number of days, and prior to the expiration of this period a contract is entered into under the ordinance, it is not void, and on the expiration of the time allowed for veto, and no disapproval, it becomes valid and binding from its date, and a subsequent attempt to repeal the ordinance is ineffective.[90] Where a contract provides that it shall be voidable by the city upon the judgment of a court of competent jurisdiction whenever there shall be a substantial failure in performance, until so avoided it is valid and binding on the city.[91] In determining by a court whether a contract is void, as where it relates to furnishing the city with water, the court can only take cognizance of a violation of legal principles in the making or scope of the contract, and whether there has been a neglect of prescribed formalities or fraud.[92] It should be noticed further in this connection that most contracts by a municipality are in the exercise of the proprietary powers belonging to it, rather than legislative, and in such cases the jurisdiction of courts is not hampered by the strict rules applicable to the exercise of legislative functions.[93] If the contract is incomplete, as where it relates to a public improvement, and provides that the work shall be in accordance with specifications annexed to and made a part of it, and there are no specifications, no valid contract exists.[94] There must be likewise, as with contracts in general, the element of mutuality.[95] Where the charter provides that

[89a] § 532, ante.

[90] Harris v. City of St. Joseph, 99 Fed. 246.

[91] Walla Walla City v. Walla Walla Water Co., 172 U. S. 1; s. c. 19 S. Ct. 77.

[92] State v. Mayor &c., 58 N. J. L. 262; s. c. 33 Atl. 740.

[93] State v. Mayor &c., 19 Mont. 518; s. c. 49 Pac. 15.

[94] Gray v. Richardson, 124 Cal. 460; s. c. 57 Pac. 385.

[95] Where a contract provides that a lighting company shall furnish such lights as the city may designate, which the city does not do but repudiates the contract and notifies the company, there is a want of mutuality and no contract exists: El Paso Gas &c. Co. v. City of El Paso, 22 Tex. Civ. App. 309; s. c. 54 S. W. 798.

in contracts by the board of public works certain powers shall be reserved to the board the contract must enumerate the powers reserved, and a general reference to the charter for an enumeration is not sufficient.[96] A contract may be valid in part and void in part, but in order that the unobjectionable part may be held valid it must be a complete contract of itself and enforceable. A contract otherwise valid and legal is not rendered invalid by the city attempting to confer an exclusive right, and therefore exceeding its powers, if the provisions of the contract otherwise are not dependent upon the illegal provision. A contract need not be rendered void in toto because of an illegal provision therein.[97] Where a city has power to make a contract for supplying the city with water, a portion of the contract relating to the exclusive and continuing features of the franchise granted may be void and not enforceable and the remaining features of the contract relating to the rentals for hydrants valid and enforceable.[98] A contract that is otherwise complete will be rendered invalid by a provision requiring all materials furnished thereunder to be shipped over a certain railroad.[99] As seen in the chapter relating to ordinances a contract must be reasonable and not oppressive.[99a] But there are no rules of general application by which the reasonableness or unreasonableness may be determined. Each case must be determined by the facts and circumstances surrounding it. A contract leasing water-works to a company for thirty years at an annual rental of fifteen hundred dollars and the cancelation of large claims of the lessees against the city has been held to be reasonable.[100] And so a contract for lighting the city for five years with the privilege of terminating the contract on three months' notice by the city if not satisfied is reasonable.[101] One claiming compensation under a contract must show that his claim was to be paid out of the current revenues, or from some fund within the immediate control of the city, or that the constitutional provision has been complied with.[102]

[96] Ricketson v. City of Milwaukee, 105 Wis. 591; s. c. 81 N. W. 864. Where the mayor was authorized by the council to contract for offices, the rental not to exceed a fixed amount, a lease for ten years to cease if the city should sooner erect a building of its own was held to be legal: City of Michigan City v. Leeds, 24 Ind. App. 271; s. c. 55 N. E. 799.

[97] Kimball v. City of Cedar Rapids, 100 Fed. 802.

[98] City of Greenville v. Greenville Water Works Co., 125 Ala. 625; s. c. 27 So. 764.

[99] Cason v. City of Lebanon, 153 Ind. 567; s. c. 55 N. E. 768.

[99a] § 525, ante.

[100] Los Angeles Water Co. v. City of Los Angeles, 88 Fed. 720.

[101] City of Hartford v. Hartford Electric L. Co., 65 Conn. 324; s. c. 32 Atl. 925.

[102] McNeal v. City of Waco, 89 Tex. 83; s. c. 33 S. W. 322.

§ 738. Contracts which have been held valid.—Without being able to classify or generalize the following contracts have been held valid on various grounds: (a) *Not in restraint of succeeding council:* A contract of a municipality for a lease of a water-works system for a period of twenty years is not necessarily void as being in restraint of succeeding councils.[103] (b) *When not contravening constitutional limitations:* A contract payable annually for water and light furnished, does not create a present indebtedness for the aggregate amount, and is therefore valid under constitutional limitations as to amount of indebtedness.[104] (c) *Maintaining and keeping roads in repair:* An agreement to build and maintain certain roads, and repair the same, so far as damaged from flooding from a dam owned by the promisor, is not void for non-compliance with the statute in relation to keeping in repair roads generally.[105] (d) *Paving and keeping a street in repair:* A contract to pave a street and make repairs rendered necessary by indifferent work or the use of defective material is not invalid in the absence of proof that the agreement to repair increased the amount of the bid and imposed upon the abutting property-owners a burden properly resting on the general public.[106] (e) *Guaranty to keep street in repair:* A guaranty to keep a street in repair for five years does not render the contract void, but the contractor can not recover for the excess of the assessment caused by the guaranty which is presumed to be ten per cent. retained by the city to secure the repairs.[107] (f) *Repairs for a term of years:* A charter prohibiting contracts for public improvements unless recommended

[103] Higgins v. San Diego Water Co., 118 Cal. 524; s. c. 45 Pac. 824; 50 Pac. 670.

[104] Foland v. Town of Frankton, 142 Ind. 546; s. c. 41 N. E. 1031. A contract for a term of 10 years payable in equal annual payments for paving and resurfacing a street is not, by reason of the term, objectionable if the current revenues are sufficient to meet the payments: Morris v. Barber Asphalt P. Co., 5 Lack. Leg. N. (Pa.) 129. Where a contract is made in good faith and is not unreasonable or unfair it may extend over a considerable term of years and not be void on the ground of public policy: Maine Water Co. v. City of Waterville, 93 Maine 586; s. c. 45 Atl. 830. Where a contract involves the erection of an expensive plant for supplying a city or village with water thirty years is not an unreasonable time for the duration of the contract: Little Falls E. & W. Co. v. City of Little Falls, 102 Fed. 663.

[105] Town of Levis v. Black River Imp. Co., 105 Wis. 391; s. c. 81 N. W. 669.

[106] City of Kansas City v. Hanson, 60 Kan. 833; s. c. 58 Pac. 474; Robertson v. City of Omaha, 55 Neb. 718; s. c. 76 N. W. 442; Barber &c. Pav. Co. v. Ullman, 137 Mo. 543; s. c. 38 S. W. 458; Allen v. City of Davenport, 107 Iowa 90; s. c. 77 N. W. 532; State v. Inhabitants &c., 60 N. J. L. 394; s. c. 38 Atl. 635; Cole v. People, 161 Ill. 16; s. c. 43 N. E. 607.

[107] City of Louisville v. Selvage, 21 Ky. L. 349; s. c. 51 S. W. 447.

by the board of public works does not prevent the council from contracting for repairs for a term of years in a paving contract which contract is made in accordance with the charter.[108] (g) *Removal of garbage:* Where an ordinance required all garbage to be removed by a licensed person it is not objectionable in that it was for a longer term than was permissible.[109] (h) *Agreement based on invalid assessment:* After a voluntary agreement to pay a sum to a municipal corporation as a proportionate share of an assessment for an improvement one is not permitted afterwards to say that the assessment was illegal and invalid in the absence of an allegation of fraud, accident or mistake in the execution of the contract. It is competent for a person to make a valid agreement to pay an invalid assessment where his property is benefited.[110] (i) *When not founded on an appropriation:* It is not material in a municipal contract that it does not appear that it is founded on an appropriation of money.[111] (j) *Subsequent restriction of debt limits:* A contract is valid notwithstanding the legislature may subsequently restrict the debt limits under which it would be invalid.[112] (k) *Sale of gas plant:* A contract of sale of a gas plant by a city in consideration that the purchaser would light the streets and the city pay the taxes against such purchaser is enforceable.[113] (l) *Not oppressive and against public policy:* A contract which has been executed and in force for ten years will not be held unreasonably oppressive and against public policy.[114] (m) *Not indefinite:* A contract for water supply is not void for not stating

[108] Barber &c. Pav. Co. v. Hezel, 76 Mo. App. 135. Where the contractor has agreed to make repairs on notice such notice must be given, although he has become insolvent and has assigned his interest in the balance of the contract price: Southern Pav. Co. v. City of Chattanooga (Tenn.), 48 S. W. 92. A city council is not authorized to make provision for repairs before the necessity exists therefor: City of Kansas City v. Hanson, 8 Kan. App. 290; s. c. 55 Pac. 513. Where a railroad company has obligated itself to keep a street in good order, and by inaction on the part of the city the street becomes in such state of repair as to require an unusual expenditure, the proper construction requires the city to restore the street to good order and require the railroad company to keep it so: State v. New Orleans &c. R. Co., 52 La. An. 1570; s. c. 28 So. 111.

[109] City of Grand Rapids v. De Vries, 123 Mich. 570; s. c. 82 N. W. 269. A contract for the disposition of sewage for five years has been held valid: McBean v. City of Fresno, 112 Cal. 159; s. c. 44 Pac. 358.

[110] Floyd v. Atlanta Banking Co., 109 Ga. 778; s. c. 35 S. E. 172. But see Union Pav. &c. Co. v. McGovern, 127 Cal. 638; s. c. 60 Pac. 169.

[111] City of Harrisburg v. Shepler, 190 Pa. St. 374; s. c. 42 Atl. 893.

[112] Ludington Water Supply Co. v. City of Ludington, 119 Mich. 480; s. c. 78 N. W. 558.

[113] Board &c. v. Capital Gas &c. Co., 16 Ky. L. 780; s. c. 29 S. W. 855.

[114] Fergus Falls Water Co. v. City of Fergus Falls, 65 Fed. 586.

the source of supply.[115] (n) *Discretion permissible:* A contract for lighting may be within the discretion of the municipality.[116] (o) *To keep turnpike in repair:* A contract with a turnpike company to remove its gate and keep its road in repair within the city limits is valid.[117] (p) *Constructing bridge over a railroad:* A city has power to bind itself to pay part of the expense of constructing a bridge over a railroad.[118] (q) *Construction of sewer:* Under a statute authorizing a town to construct a town hall, necessary outbuildings and convenient accommodations for the same it is authorized to construct a sewer for the service of the town hall.[119] (r) *Water-supply as fire protection:* Where the statute authorizes the city to provide for the health and welfare of the city it has power to contract for a water-supply as a protection against fires.[120] (s) *Construction of crematories:* Where a city is authorized to contract or otherwise for the disposal of its garbage and to purchase or lease land within its territory for the purpose of erecting crematories, it does not prevent it from contracting with a rendering establishment outside its limits to dispose of dead animals in a sanitary and inoffensive manner.[121] (t) *To fix water rates:* A charter granting power to provide for supplying a city with water gives power to fix the rates to be charged to consumers.[122] (u) *Heating and lighting court-house:* A joint committee created by law and which has control of the court-house has authority to contract for heating and lighting the same.[123] (v) *No appropriation to pay made:* Irregularity in the payment for land by a municipality, as where no formal appropriation had been made as required by the charter, will not affect the title to the land of the municipality, in a suit by a citizen to rescind.[124] (w) *License not a contract:* A license for a whole year is not a contract for that time within the provision of the constitution.[125] (x) *Franchise for term of years:* Where a charter authorizes the city to provide for lighting the streets

[115] Brady v. City of Bayonne, 57 N. J. L. 379; s. c. 30 Atl. 968.

[116] Wade v. Borough of Oakmont, 165 Pa. St. 479; s. c. 30 Atl. 959.

[117] Providence &c. Plank R. Co. v. City of Scranton, 1 Lack. Leg. N. (Pa.) 183.

[118] City of Argentine v. Atchison &c. R. Co., 55 Kan. 730; s. c. 41 Pac. 946.

[119] Watson v. Town of New Milford, 72 Conn. 561; s. c. 45 Atl. 167.

[120] Webb City &c. Water Works Co. v. City of Webb City, 78 Mo. App. 422. Cf. Chesapeake &c. Tel. Co. v. Mayor &c., 89 Md. 689; s. c. 43 Atl. 784; 44 Atl. 1033.

[121] Tiede v. Schneidt, 105 Wis. 470; s. c. 81 N. W. 826.

[122] Los Angeles Water Co. v. City of Los Angeles, 88 Fed. 720.

[123] State v. McCardy, 62 Minn. 509; s. c. 64 N. W. 1133.

[124] Ecroyd v. Coggeshall, 21 R. I. 1; s. c. 41 Atl. 260.

[125] St. Charles v. Hackman, 133 Mo. 634; s. c. 34 S. W. 878.

and for a water-supply, by contract or otherwise, and to grant franchises for a term of years for such purposes, a franchise may be granted or contract entered into binding the city for the term of the franchise or contract.[126] (y) *Contract for term of years in Ohio:* The Ohio act of May 4, 1885, as amended by act of May 12, 1886, supersedes, in certain cities, the act of January 29, 1885, and a twenty-year contract is legal, without submission to a vote of the electors.[127] (z) *Time for commencement and completion of contract:* A statute which requires the superintendent of streets to fix the time for the commencement and completion of the work is not complied with by an agreement to commence work in fifteen days and complete same in one hundred and eighty days thereafter.[128]

§ 739. **Invalidity of contracts.**—(a) *In violation of statute:* Where the statute provides that no contract, or other obligation involving an expenditure of money, shall be made, or ordinance or resolution for an appropriation or expenditure of money shall be passed, unless the auditor shall first certify that the money required is in the treasury to the credit of the fund to be drawn upon, it applies only to street-improvements to be paid from the general taxes and not to those to be paid by taxes on abutting property-owners.[129] And where the charter provides that, except as therein otherwise provided, any public work or improvement that may be the subject of a contract must first be authorized by the board of public improvements, and by the municipal assembly, it has no reference to the public lighting of the city.[130] Where by statute personal property can not be contracted for at one time to exceed five hundred dollars unless authorized by a majority of the electors, a purchase of fire-apparatus exceeding five hundred dollars is invalid;[131] and in such case the contract is not rendered valid by splitting the price into parts of less than five hundred dollars.[132] (b) *In violation of constitutional limitations:*

[126] Cunningham v. City of Cleveland, 98 Fed. 657; s. c. 39 C. C. A. 211.

[127] Defiance Water Co. v. City of Defiance, 90 Fed. 753.

[128] Palmer v. Burnham (Cal.), 47 Pac. 599. The mere fact that one of the parties to a contract executes it for the benefit of an undisclosed third person does not render it invalid: Herman v. City of Oconto, 100 Wis. 391; s. c. 76 N. W. 364.

[129] Comstock v. Incorporated Village of Nelsonville, 61 Ohio St. 288; s. c. 56 N. E. 15.

[130] Blank v. Kearny, 61 N. Y. S. 79; s. c. 44 App. Div. (N. Y.) 592.

[131] Fire Extinguisher Mfg. Co. v. City of Perry, 8 Okla. 429; s. c. 58 Pac. 635.

[132] Fire Extinguisher Mfg. Co. v. City of Perry, 8 Okla. 429; s. c. 58 Pac. 635. Cf. Raton Waterworks Co. v. Town of Raton, 9 N. M. 70; s. c. 49 Pac. 898. Contract held invalid without being countersigned

Where the constitution limits the expenditures to the revenue provided for such year, and the revenue has been expended for the year, the city, no matter how pressing its needs may be, can not incur liabilities to be paid from the revenues of the succeeding year.[183] Where the constitution provides that no indebtedness shall be incurred unless at the time provision is made for the payment of interest and to create a sinking-fund therefor, a contract without such provision is void.[184] Where a city grants the right to erect telegraph-poles in a street on condition that the city be permitted to use them free of charge, and the grant is accepted and the poles used by the city, it can not subsequently impose a tax on such poles.[185] (c) *In violation of precedent preliminaries:* Frequently the statute requires certain preliminaries to be taken, which are made conditions precedent to the making of valid contracts involving the expenditure of money, and in such case these provisions are generally construed as mandatory. Where the statute requires as a precedent to entering into a contract that the auditor, or clerk, shall certify that the money required is in the treasury to the credit of the particular fund, this is an essential to making a valid contract.[186] Where the statute provides

by the comptroller under provisions of charter: City of Superior v. Norton, 63 Fed. 357; s. c. 12 C. C. A. 469.

[183] Bradford v. City &c. of San Francisco, 112 Cal. 537; s. c. 44 Pac. 912. A contract in excess of the constitutional limit without a vote of the people is void: City of Covington v. McKenna, 99 Ky. 508; s. c. 36 S. W. 518; 18 Ky. L. 288. A constitutional limit of twenty years in the grant of a franchise or privilege will prohibit the making of a contract granting a franchise of twenty years from a future date: City of Somerset v. Smith, 20 Ky. L. 1488; s. c. 49 S. W. 456.

[184] Noel v. City of San Antonio, 11 Tex. Civ. App. 580; s. c. 33 S. W. 263.

[185] City of St. Louis v. Western U. Tel. Co., 63 Fed. 68.

[186] City of Findlay v. Pendleton, 62 Ohio St. 80; s. c. 56 N. E. 649; Sullivan v. City of Leadville, 11 Colo. 483; s. c. 18 Pac. 736; Town of Durango v. Pennington, 8 Colo. 257, 260; s. c. 7 Pac. 14 (where the settled law was announced that "a party dealing with a municipal body is bound to see to it that all mandatory provisions of the law are complied with, and if he neglects such precaution he becomes a mere volunteer and must suffer the consequences"); Tracey v. People, 6 Colo. 151. Where there is fraud between the contractor and the city officers by which the letting of a contract is secured but not to the lowest bidder, as required by the mandatory provision of the charter, the city may properly defend on this ground: Nelson v. Mayor &c., 5 N. Y. S. 688; s. c. 23 N. Y. St. 518. Daniels, J., said:—"Where parties in this manner join together to evade and disregard the obligations and duties of public officers and the plain mandates of statutory provisions, the contract resulting from their acts and combination is not only fraudulent, but it is unlawful, and upon such an unlawful agreement no action can be maintained for indemnity by either of the parties." See also, People v. Stephens, 71 N. Y. 527, 558.

that no contract involving the appropriation of money shall take effect until the controller shall certify thereon that the estimated cost of the work has been charged against the appropriation on which it is founded, it can not be dispensed with.[137] This requirement applies to a contract made by a city with a contractor for paving in front of the city's property.[138] A contract made without complying with the statutory requirements as to interest and sinking-fund is void.[139] Where by constitutional provision a municipal corporation is prohibited from creating an indebtedness unless a provision is made at the time for levying and collecting a sufficient tax to pay interest thereon, and for the creation of a sinking-fund for the final payment, a contract in violation of such provision is void.[140] In such case it makes no difference that the city had twelve months in which to pay the debt, or had a sufficient amount to pay the debt in another fund. (d) *Interest of officers in contract:* It is a universal rule, unyielding in its application and founded on public policy, that no municipal officer shall be interested, directly or indirectly, in municipal contracts. An alderman has no right to enter into a contract with the council. Public policy forbids such transactions.[141] The city has no right to contract with a corporation in which a member of the council is interested (see statute).[142] A stockholder and officer of a corporation who is also a member of the council, may be disqualified from

[137] Continental C. Co. v. City of Altoona, 92 Fed. 822.

[138] City of Harrisburg v. Shepler, 190 Pa. St. 374; s. c. 42 Atl. 893.

[139] Berlin I. B. Co. v. City of San Antonio, 62 Fed. 882. And see Kuhls v. City of Laredo (Tex. Civ. App.), 27 S. W. 791.

[140] Mineralized Rubber Co. v. City of Cleburne, 22 Tex. Civ. App. 621; s. c. 56 S. W. 220. A contract for lighting the streets for five years is void in Minneapolis unless the funds are on hand and taxes actually levied at the time the contract is made are sufficient to cover the liability: Kiichli v. Minnesota &c. Elec. Co., 58 Minn. 418; s. c. 59 N. W. 1088. An ordinance making a contract for water-works under Neb. Comp. St., ch. 14, art. 1, § 69, is valid though not preceded by an appropriation to meet payments for water rentals: City of North Platte v. North Platte Water Works Co., 56 Neb. 403; s. c. 76 N. W. 906. Where the law requires the publication of a notice of a public improvement, as to what is sufficient notice see Arnold v. City of Ft. Dodge, 111 Iowa 152; s. c. 82 N. W. 495. Where the making of a contract is within the corporate powers, and it is regular on its face and has been performed by the contractor, mere irregularities in preliminary steps are not a defense: State v. Long Branch Police &c. Com., 59 N. J. L. 371; s. c. 35 Atl. 1070.

[141] Snipes v. City of Winston, 126 N. C. 374; s. c. 35 S. E. 610; Santa Ana Water Co. v. Town of Buenaventura, 65 Fed. 323.

[142] Goodrich v. City of Waterville, 88 Maine 39; s. c. 33 Atl. 659; Nunemacher v. City of Louisville, 98 Ky. 334; s. c. 32 S. W. 1091; 17 Ky. L. 933.

voting on an ordinance providing for a supply of water to the municipality by the corporation, yet the ordinance itself is not rendered invalid by such vote if it appears that the contract is legitimate and a majority of the members of the council voted for the ordinance without counting the invalid vote. This is not the rule, however, where the contract is prohibited.[143] In a suit on a contract with a board of education a conspiracy between the plaintiff and a member of the board whereby the latter was to have the benefit of the contract and the bid of the former was in fact for the latter will prevent a recovery thereon where the charter prohibits its members from being interested directly or indirectly in its contracts.[144] Where the charter prohibits an officer being interested directly or indirectly in any contract in which the corporation is concerned he can not charge for services rendered as attorney in court for it whether the contract is express or implied;[145] but the rule does not apply where the mayor after the making of a contract and its acceptance takes stock in a corporation which succeeds to the rights of the original contracting parties.[146] And so a poundmaster can not recover for premises furnished by him under an implied contract.[147] It has been held that where an alderman holds as collateral security a share of stock in an electric-light company, he is not permitted to vote authorizing a contract with such company though the stock has small value.[148] And so a secretary and stockholder of a corporation which has a contract with a city for lighting can not be councilman although the contract was made prior to his election.[149] The mere fact that the mayor and a member of the council may at some time become liable as stockholders in a corporation should it become insolvent and other contingencies happen will not render invalid a contract between the municipality and the corporation, it appearing that they were no longer stockholders.[150] Relationship between the city engineer and the contractor who has a contract with the city does not render the contract void, and particularly so where it appears that the engineer has no interest in the contract directly or indirectly.[151] A contract is

[143] Marshall v. Borough of Ellwood City, 189 Pa. St. 348; s. c. 41 Atl. 994.

[144] Heughes v. Board of Education &c., 55 N. Y. S. 799; s. c. 37 App. Div. (N. Y.) 180.

[145] West v. Berry, 98 Ga. 402; s. c. 25 S. E. 508.

[146] State v. Mayor &c., 19 Mont. 518; s. c. 49 Pac. 15.

[147] Macy v. City of Duluth, 68 Minn. 452; s. c. 71 N. W. 687.

[148] Foster v. City of Cape May, 60 N. J. L. 78; s. c. 36 Atl. 1089.

[149] Commonwealth v. De Camp, 177 Pa. St. 112; s. c. 35 Atl. 601.

[150] City of Broken Bow v. Broken Bow Waterworks Co., 57 Neb. 548; s. c. 77 N. W. 1078.

[151] Cason v. City of Lebanon, 153 Ind. 567; s. c. 55 N. E. 768.

not rendered invalid by reason of the contractor being a partner of a member of the board letting the contract,[152] nor will the mere fact that a member of the council is interested in a contract for public improvement invalidate the tax for such improvements.[153] Where a city has been furnished with gas by a gas company it is liable for the reasonable value thereof although the mayor is a stockholder and is the president of the company.[154] Where the council proceedings were irregular and a purchase was made from a councilman and the council has ratified the payment and used the material and can not return it, the town can not recover the money paid.[155] (e) *Interest of municipality in subject-matter:* It is at all times a question of prime importanee that the city shall be interested in the subject-matter of the contract. It is not sufficient that some of its citizens may be benefited thereby, or even a considerable number of them, nor its officers or employes be parties. A contract by a corporation council for services of a stenographer in a suit to which the city is not a party and in no way interested is invalid.[156] (f) *Must be in good faith:* A contract entered into prior to consolidation and not to take effect until after and to run for ten years is not in good faith, is against public policy and void.[157] (g) *In restraint of future legislation:* The authorities of a city can not by present agreement bind themselves to exercise their legislative powers in a particular manner at some future time.[158] (h) *Delegation of powers:* The reservation in a contract of power in the city engineer to annul the contract is but an attempt to delegate legislative power, and, therefore, void.[159] (i) *Contracts at special meetings:* A contract entered into at a special meeting of the council of which several members had no notice and in which they did not participate is invalid.[160]

[152] State v. City of Passaic, 63 N. J. L. 208; s. c. 42 Atl. 1058.

[153] Roberts v. First Nat'l Bank, 8 N. D. 504; s. c. 79 N. W. 1049.

[154] Capital Gas Co. v. Young, 109 Cal. 140; s. c. 41 Pac. 869. The liability in this case grew out of the obligation of the company to furnish gas under the code and not by contract.

[155] Frick v. Brinkley, 61 Ark. 397; s. c. 33 S. W. 527.

[156] City of Chicago v. Williams, 80 Ill. App. 33.

[157] Hendrickson v. City of New York, 160 N. Y. 144; s. c. 54 N. E. 680; 56 N. Y. S. 580; 38 App. Div. (N. Y.) 480.

[158] New York &c. R. Co. v. Village of New Rochelle, 60 N. Y. S. 904; s. c. 29 Misc. (N. Y.) 195.

[159] Neill v. Gates, 152 Mo. 585; s. c. 54 S. W. 460.

[160] London &c. Land Co. v. City of Jellico, 103 Tenn. 320; s. c. 52 S. W. 995; Lord v. City of Anoka, 36 Minn. 176; s. c. 30 N. W. 550; Township Board &c. v. Hastings, 52 Mich. 528; s. c. 18 N. W. 250; Supervisors &c. v. Horton, 75 Iowa 271; s. c. 39 N. W. 394; Paola &c. R. Co. v. Commissioners &c., 16 Kan. 302; People v. Batchelor, 22 N. Y. 128; Harding v.

(j) *Contract increasing interest:* A contract by sinking-fund trustees for the sale of bonds resulting in adding interest to the funded public debt is invalid.[161] (k) *Failure to attach specifications:* The failure to annex specifications to a contract referred to a part thereof renders the contract invalid and the assessment based thereon void.[162] (l) *Purchase of smallpox hospital:* Power to make police, sanitary, and other regulations, not in conflict with general law, does not authorize the purchase of a site for a smallpox hospital.[163] (m) *Fixing price of water for thirty years:* Where by statute cities are authorized to contract for a water-supply for a period not exceeding thirty years, they may not fix a price for that period.[164] (n) *In violation of popular vote:* Where the electors, at an election called for the purpose, have expressed themselves, in relation to street lighting, in favor of construction or purchase of an electric-light plant, a subsequent contract with a corporation for street lighting for ten years is void.[165] (o) *Diversion of public funds:* A contract unlawfully diverting public funds is void.[166] (p) *Contracts procured by bribery:* The rule is universal that fraud in procuring the making of a contract vitiates the contract. Hence bribery in obtaining a contract will render it void, although it is with the lowest bidder.[167] (q) *Must be a corporation:* A contract by what is neither a de facto nor de jure corporation is a nullity.[168] (r) *Change in improvement:* An act changing the line of an improvement after a contract had been made so as to lessen the amount and cost of work renders the contract inoperative and the assessment

Vandewater, 40 Cal. 77; Stow v. Wyse, 7 Conn. 214.

[161] City of Cincinnati v. Guckenberger, 60 Ohio St. 353; s. c. 54 N. E. 376.

[162] Gray v. Richardson, 124 Cal. 460; s. c. 57 Pac. 385.

[163] Von Schmidt v. Widber, 105 Cal. 151; 38 Pac. 682.

[164] City of Carlysle v. Carlysle Water &c. Co., 52 Ill. App. 577; s. c. affirmed on other grounds, 140 Ill. 445; 29 N. E. 556. It is beyond the power of a city to enter into a contract with a railroad company binding itself to maintain and keep in repair for all future time a bridge which is the joint work of the city and railroad company, on a public highway and over tracks belonging to the railroad company, and agreeing to allow no grade crossings at such point: State v. Minnesota &c. R. Co., 80 Minn. 108; s. c. 83 N. W. 32.

[165] George v. Wyandotte &c. Light Co., 105 Mich. 1; s. c. 62 N. W. 985.

[166] Village of Kent v. Dethridge &c. Glass Co., 10 Ohio C. C. 629.

[167] Herman v. City of Oconto, 100 Wis. 391; s. c. 76 N. W. 364. An allegation in an answer that the contract sued on was obtained by bribery of the officers charged with its execution, the ones bribed and the amount paid being unknown, is sufficient where no application for a more specific statement is made: Herman v. City of Oconto, 100 Wis. 391; s. c. 76 N. W. 364.

[168] City of Guthrie v. Wylie, 6 Okla. 61; s. c. 55 Pac. 103.

void.[169] (s) *Compromise of an illegal claim:* A compromise of an illegal claim against the city is not legal, and creates no liability,[170] and so as to a contract in connection with an invalid franchise,[171] and a contract based on a void ordinance.[172] (t) *Must be reasonable:* A contract with a water company to furnish the city with water for thirty years is unreasonable and beyond the power of the city to make.[173] And so is an exclusive privilege for lighting for ninety-nine years.[174] (u) *Exclusive employment of union labor:* A stipulation in a contract by a board of education that none but union labor shall be employed by the contractor is void. It is a discrimination against different classes of citizens and of such a nature as to restrict competition and to increase the cost of work, and is an infringement of the constitutional rights of citizens.[175] (v) *To aid construction of railroad:* An agreement to pay a stipulated monthly rental for a waterworks plant on condition that the lessor would construct a railroad between certain points, where the city has no right to expend funds to aid railroads, is void.[176] While a contract with specified persons may be void as granting an unauthorized exclusive franchise, yet so long as the city accepts services under the contract it must pay the stipulated price.[177] (w) *Invalid contract—How abrogated:* Where a contract is objectionable in itself on the ground of infringing on the police power of the state, or if it becomes so in its execution, the municipality may, in the exercise of its police power, regulate the manner in which

[169] Warren v. Chandos, 115 Cal. 382; s. c. 47 Pac. 132.

[170] Village of Fort Edward v. Fish, 33 N. Y. S. 784; s. c. 86 Hun (N. Y.) 548.

[171] Nicholasville W. Co. v. Board &c. (Ky.), 64 S. W. 1133.

[172] Ellis v. City of Cleburne (Tex. Civ. App.), 35 S. W. 495.

[173] Flynn v. Little Falls &c. Co., 74 Minn. 180; s. c. 77 N. W. 38; 78 N. W. 106.

[174] City of Wellston v. Morgan, 59 Ohio St. 147; s. c. 52 N. E. 127.

[175] Adams v. Brenan, 177 Ill. 194; s. c. 52 N. E. 314; Millett v. People, 117 Ill. 294; s. c. 7 N. E. 631; Frorer v. People, 141 Ill. 171; s. c. 31 N. E. 395; Bruceville Coal Co. v. People, 147 Ill. 66; s. c. 35 N. E. 62; Ramsey v. People, 142 Ill. 380; s. c. 32 N. E. 364; Ritchie v. People, 155 Ill. 98; s. c. 40 N. E. 454; People v. Chicago Live Stock Exch., 170 Ill. 556; s. c. 48 N. E. 1062; Fishburn v. City of Chicago, 171 Ill. 338; s. c. 49 N. E. 532.

[176] Higgins v. San Diego Water Co., 118 Cal. 524; s. c. 50 Pac. 670. A city without special authority can not extend its aid to an association: Park v. Modern Woodmen, 181 Ill. 214; s. c. 54 N. E. 932. The subscription for corporate stock by a city being unauthorized the acceptance of bonds by it does not make it a stockholder: City of Geneseo v. Geneseo &c. Co., 55 Kan. 358; s. c. 40 Pac. 655. But if there was a general power to contract for a water supply the city will be liable on a quantum valebat for the reasonable value of the use of the plant.

[177] Illinois Trust &c. Bank v. Arkansas City W. Co., 67 Fed. 196.

it may be carried out, or may abrogate it entirely upon the principle that it can not bind itself to any course of action which shall prove deleterious to the health or morals of its inhabitants.[178] An illegal contract might be canceled at the suit of a lot-owner in a suit brought before much work had been done, and before the bonds had been sold, and an assessment made, and the fact that at the time of the trial the work had been completed and the bonds issued and sold would not cure the illegality.[179] (x) *Recovery under void contract:* A contractor can not recover from the city the value of a bridge built under a void contract.[180] The city may recover the proceeds of bonds issued by it to a corporation under a void subscription to the capital stock.[181] (y) *Making of long lease:* Where the city holds land for the benefit of the public it has no right to make a long lease of such land for private purposes.[182] (z) *Release of railway from duty:* Where a duty rests upon a railway company to restore a public highway to its former condition the city can not make a valid contract relieving the company from such performance and waiving its power to enforce performance.[183] (aa) *Remedy in equity:* A contract with a city to furnish it for municipal use a fire-alarm telegraph system which is void for contravening constitutional limitations can not be changed by a court of equity so as to give an implied franchise to the contract-

[178] Walla Walla City v. Walla Walla Water Co., 172 U. S. 1; s. c. 19 S. Ct. 77.

[179] Allen v. City of Davenport, 107 Iowa 90; s. c. 77 N. W. 532.

[180] Berlin I. B. Co. v. City of San Antonio, 62 Fed. 882. A town is relieved from liability on a contract assigned without its consent, though not annulled until after receiving the benefits, where the law prohibits the assignment of such contracts without the written consent of the town, and authorizes its revocation on the ground of an assignment without consent: Suburban Elec. Light Co. v. Town of Hempstead, 38 App. Div. (N. Y.) 355; s. c. 56 N. Y. S. 443.

[181] City of Geneseo v. Geneseo &c. Co., 55 Kan. 358; s. c. 40 Pac. 655.

[182] Weeks v. City of Galveston, 21 Tex. Civ. App. 102; s. c. 51 S. W. 544. A city can not lease to one person all its wharf and water privileges: City of Corpus Christi v. Central W. & W. Co., 8 Tex. Civ. App. 94; s. c. 27 S. W. 803. A lease of franchises by a city after the repeal of an act granting them to the city is void: Central W. & W. Co. v. City of Corpus Christi, 23 Tex. Civ. App. 390; s. c. 57 S. W. 982. A city, as lessor, is governed by the same obligations of law as are imposed upon other lessors, and if part of the leased premises are taken for public improvement there must be a diminution of rent: Hinrichs v. City of New Orleans, 50 La. An. 1214; s. c. 24 So. 224.

[183] State v. Minnesota Trans. R. Co., 80 Minn. 108; s. c. 83 N. W. 32. Cf. Flynn v. Little Falls &c. Co., 74 Minn. 180, 186; s. c. 77 N. W. 38; 78 N. W. 106; State v. St. Paul City R. Co., 78 Minn. 331; s. c. 81 N. W. 200; Nash v. Lowry, 37 Minn. 261; s. c. 33 N. W. 787.

ing company to operate the system for its own benefit and use, nor can the court authorize the delivery of possession of the plant as an entirety where part of the apparatus and poles belong to the city.[184] Where the charter requires all contracts to be signed by the mayor, or some other person authorized thereto, a contract for a sewer signed only by the parties who agree to do the work is invalid and no action can be maintained thereon for damages for preventing its performance by the city, nor will equity grant relief, where no work has been done and there is no detriment except prospective profits.[185]

§ **740. Construction of contracts.**—Municipal contracts are governed by the same general rules of construction as are applied to other contracts with but few minor exceptions. The construction of a municipal contract is to be governed by the surroundings existing at the time, and not in the light of subsequent developments and newly arising conditions.[186] A few judicial constructions under municipal contracts are given though no general rules are to be derived therefrom. (a) *As to losses—By whom borne:* Where a contract provided that all losses arising from the nature of the work and from unseen obstructions should be borne by the contractor the city is not liable.[187] (b) *To improve a street:* A contract binding a railroad company to regrade and gravel a street used by it, place it in a good condition and keep it in good repair is not to be construed as a contract to improve the street by a brick pavement, but it does not prevent the city from improving the street by special assessment.[188] (c) *What estimates include:* Estimates for grading a street properly include the filling in and the adjustment of sewers, catch-basins and manholes.[189] (d) *When plans and specifications govern:* Where a contract provides that the work is to be done according to certain plans and specifications which form part of it, and nothing is said as to the proposal and acceptance which are attached to the contract, the plans and specifications will govern without reference to the proposal and acceptance.[190] (e) *Rent of hydrants:* A contract by which the city

[184] Gamewell &c. Tel. Co. v. City of Laporte, 102 Fed. 417; s. c. 42 C. C. A. 405; 96 Fed. 664.

[185] Frick v. City of Los Angeles, 115 Cal. 512; s. c. 47 Pac. 250. A judgment rendered by consent against town commissioners will not estop the town from setting up want of power to make such contract: Union Bank &c. v. Commissioners &c., 119 N. C. 214; s. c. 25 S. E. 966; 34 L. R. A. 487.

[186] Los Angeles Water Co. v. City of Los Angeles, 88 Fed. 720.

[187] Mairs v. Mayor &c., 65 N. Y. S. 351; s. c. 52 App. Div. (N. Y.) 343.

[188] Cason v. City of Lebanon, 153 Ind. 567; s. c. 55 N. E. 768.

[189] Sawyer v. City of Chicago, 183 Ill. 57; s. c. 55 N. E. 645.

[190] Murphy v. City of Yonkers, 60 N. Y. S. 940; s. c. 45 App. Div. (N. Y.) 621.

rents a specified number of hydrants for a specific sum per annum for the period of ten years with the privilege of taking any additional hydrants at a specified annual rental means that if additional hydrants are rented it shall be for the remaining portion of the ten years and not until the order may be rescinded.[191] (f) *Not retrospective:* The limitation of a tax to seven mills on the dollar for water supply does not apply to existing contracts.[192] (g) *Obligation to purchase water-works:* A grant of the right to erect water-works providing that at the expiration of twenty years, if the grant should not be renewed, the city should purchase the works, makes it obligatory on the city to purchase if the grant is not renewed.[193] (h) *When obligation of contract impaired:* A statute so construed as to require a vote of the taxpayers on the reincorporation of a city or town, in favor of assuming the debts of the old corporation, before the new corporation is held therefor, impairs the obligation of a contract and is void.[194] (i) *"Street" —Meaning of:* In the absence of limiting words "street" means the whole area from the line of lots on one side to the line of lots on the other, and includes the sidewalk areas.[195] (j) *Guaranty for repairs, when:* A contract including maintenance will be regarded as a guaranty in a contract for repaving, where it does not appear that the bid was higher than if the maintenance had been omitted.[196]

[191] State v. City of Phillipsburg, 23 Mont. 16; s. c. 57 Pac. 405.

[192] State v. City of Kearney, 49 Neb. 337; s. c. 70 N. W. 255.

[193] National Water Works Co. v. Kansas City, 62 Fed. 853; s. c. 10 C. C. A. 653.

[194] Shapleigh v. San Angelo, 167 U. S. 646; s. c. 17 S. Ct. 957.

[195] Board of Public Works &c. v. Hayden, 13 Colo. App. 36; s. c. 56 Pac. 201.

[196] Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939. A contract for construction of tunnel partly through rock and partly through earth construed: City of Chicago v. Duffy, 179 Ill. 447; s. c. 53 N. E. 982. As to when rentals are due in advance for water supplies, see City of Greenville v. Greenville Water Works Co., 125 Ala. 625; s. c. 27 So. 764. Construction of contract under R. I. act of June 13, 1878, §§ 9, 10, in relation to regulation of water rates: Arnold v. Mayor &c., 21 R. I. 15; s. c. 41 Atl. 576. Construction of Ohio Rev. St., § 2486, as to power of trustees in relation to contracts: Kerr v. City of Bellefontaine, 59 Ohio St. 446; s. c. 52 N. E. 1024. Construction of Seattle charter with reference to the validity of contracts thereunder: Moran v. Thompson, 20 Wash. 525; s. c. 56 Pac. 29. Construction of St. Louis charter with reference to the validity of contracts thereunder: Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939. Construction of charter of Bay City, Mich., and contract thereunder: Fox v. City of Bay City, 122 Mich. 499; s. c. 81 N. W. 352. Construction of contract under St. Paul city charter: St. Paul Gaslight Co. v. City of St. Paul, 78 Minn. 39; s. c. 80 N. W. 774, 877. Construction of contracts generally,—see Barry v. City of New York, 56 N. Y. S. 1049; s. c. 38 App. Div. (N. Y.) 632.

§ 741. **Extras.**—There are many unforeseen contingencies that arise in the performance of municipal contracts that by no reasonable probability could have been anticipated, in the inception of the contract, and afford grounds for well-founded claims for extra compensation. While this is true no reason exists why the contract itself should not contain provisions, equitable and just to all concerned, for adjusting all claims for extra compensation. There is probably no matter, in the management of municipal affairs, requiring greater acumen, judgment, and legal ability than the preparation of municipal contracts, involving, as they frequently do, complicated interests, vast expenditures of money and extending over considerable periods of time. Claims for extras, or extra compensation over and beyond the contract price, may be, and often are, equitable and just, but the casual observer of the trend of municipal litigation must observe that they are often made, either as an evasion of the law requiring contracts to be let to the lowest responsible bidder, or as a means of extortion. There are two adequate remedies for this evil which are easily attainable; that is, judicious legislation, such as has been adopted in a few states, and ample provisions touching all claims for extras under municipal contracts, embodied in the contract itself. There are many safeguards thrown around the execution of municipal contracts, for the protection of the public, all of which are rendered nugatory by laxness in legislation, or want of care in the drafting of the contract in the matter of extras. The provision of a contract that no extras were to be allowed except in case of a change of the route, or appliances, and then only when agreed upon and endorsed on the contract, or, in case of a disagreement, the engineer should fix a valuation, and endorse the same on the contract, will prevent a recovery for extras furnished at the request of the engineer, but of which the council had no knowledge, and no endorsement on the contract was made. The engineer had no power to contract for the city.[197] A municipality is not liable for work done outside of the contract although done by order of the engineer of the municipality and with the knowledge of some of the municipal officers.[198] The contract may provide that no extra work shall be performed or material furnished except on the written order of the contractor, signed or countersigned by the city engineer, and approved by the city council, and unless this is done the city is not liable.[199] It, no doubt, would be equally efficacious, in many cases, to provide also that the municipal contract

[197] J. M. Griffith Co. v. City of Los Angeles (Cal.), 54 Pac. 383.

[198] West Chicago Park Com'rs v. Kincade, 64 Ill. App. 113.

[199] City of Huntington v. Force, 152 Ind. 368; s. c. 53 N. E. 443.

shall in no case be modified, changed or in any manner extended to include extra work or material except by order of the city council by ordinance duly enacted. The contract may also provide that no claim for extras shall be binding on the municipality unless presented in writing to the city council for allowance within a specified period, and no suit or proceeding shall be based thereon without such presentation, the presentation to include a minute statement of the nature, items, etc. No recovery can be had for work done outside of specifications designated by the engineer.[200] The acceptance and use of a building does not bind the city to pay for extra work done thereon which was unauthorized.[201] The furnishing of extra lights in excess of the number required by the contract for four years without demanding payment, receiving payment monthly for those furnished under the contract, is not conclusive that the extra lights were furnished gratuitously.[202] Extra work rendered necessary by a mistake of the city engineer makes the city liable therefor.[203] Whether additional work was extra work was left for the future, and a provision vesting in the engineer the final decision as to construction and meaning of the specifications has no application and his decision is not binding.[204] A contractor doing work made necessary by unforeseen exigencies is entitled to extra compensation therefor.[205]

§ 742. **Exclusive franchises and privileges.**—The law does not look with favor upon municipal contracts granting exclusive privileges and has at all times condemned monopolies. There may be, and sometimes are, extenuating circumstances involved, particularly in the matter of time or the duration of the contract, but there are no general rules pertaining to the subject and each case is governed by its own facts and circumstances. A grant of especial and exclusive privileges is void.[206] And so is a contract granting an exclusive right and franchise for twenty-one years.[207] A contract with a water-supply company which contains no privileges, and no contract is made for fur-

[200] McEwen v. City of Nashville (Tenn. Ch. App.), 36 S. W. 968.

[201] Boston Elec. Co. v. City of Cambridge, 163 Mass. 64; s. c. 39 N. E. 787.

[202] Brush Elec. &c. Co. v. City Council &c., 114 Ala. 433; s. c. 21 So. 960.

[203] McCann v. City of Albany, 42 N. Y. S. 94; s. c. 11 App. Div. (N. Y.) 378.

[204] Murphy v. City of Yonkers, 60 N. Y. S. 940; s. c. 45 App. Div. (N. Y.) 621.

[205] Abells v. City of Syracuse, 40 N. Y. S. 233; s. c. 7 App. Div. (N. Y.) 501. General construction of contract as to extras,—see Braney v. Inhabitants &c., 167 Mass. 16; s. c. 44 N. E. 1060; City of Chicago v. Weir, 165 Ill. 582; s. c. 46 N. E. 725.

[206] Parfitt v. Ferguson, 38 N. Y. S. 466; s. c. 3 App. Div. (N. Y.) 176.

[207] Illinois Trust &c. Bank v. Arkansas City W. Co., 67 Fed. 196.

nishing the inhabitants with water, does not preclude the city from erecting or purchasing water-works to supply its inhabitants and for its own use and is not ground for injunction.[208] A contract between a city and an electrical subway company of the right to construct subways, to lease space therein without prejudice to the city to enter into further and different contracts, and that nothing shall be construed as granting exclusive privileges, reserves to the city the right to grant other privileges as to subways.[209] A contract to be a monopoly must be with reference to franchises and agreements in restriction of trade, and not mere police regulations in the interest of public health.[210] Where no exclusive rights are given it is not a monopoly.[211] Where a board of health is authorized to provide for the collection and disposal of its garbage it can contract with a single person for such work and not create an illegal monopoly.[212] The grant of a franchise for water and light plants for a term of years is not the grant of an exclusive privilege.[213]

§ 743. **Contracts ultra vires.**—The general subject of ultra-vires acts of municipal corporations is treated in a special chapter, and the subject will only be incidentally considered in this connection. There are many municipal contracts that are illegal and therefore void that are not to be classified with ultra-vires contracts. An ultra-vires contract is one made concerning a subject-matter that is beyond the general scope of power of the corporation to contract. A municipality would have no power to contract concerning a mining interest, a dry-goods business, or a grain speculation, and if it did so the contract would be ultra vires and void. A contract in violation of the statute or contrary to public policy may be equally void but not ultra vires,[214]

[208] Bienville Water &c. Co. v. City of Mobile, 95 Fed. 539.

[209] Empire City Subway Co. v. Broadway &c. R. Co., 159 N. Y. 555; s. c. 54 N. E. 1092.

[210] Coombs v. MacDonald, 43 Neb. 632; s. c. 62 N. W. 41. Cf. Walker v. Jameson, 140 Ind. 591; s. c. 37 N. E. 402; 39 N. E. 869; 28 L. R. A. 679; Smiley v. MacDonald, 42 Neb. 5; s. c. 60 N. W. 355; 27 L. R. A. 540, n. But see In re Lowe, 54 Kan. 757; s. c. 39 Pac. 710; 27 L. R. A. 545.

[211] Ludington Water-Supply Co. v. City of Ludington, 119 Mich. 480; s. c. 78 N. W. 558.

[212] State v. Orr, 68 Conn. 101; s. c. 35 Atl. 770; 34 L. R. A. 279.

[213] Cunningham v. City of Cleveland, 98 Fed. 657. What not a monopoly,—see Waco Water &c. Co. v. City of Waco (Tex. Civ. App.), 27 S. W. 675. Ordinance of the city of Walla Walla held not to grant an exclusive franchise to water company: City of Walla Walla v. Walla Walla Water Co., 172 U. S. 1; s. c. 19 S. Ct. 77.

[214] Field v. City of Shawnee, 7 Okla. 73; s. c. 54 Pac. 318; and see ch. 16, ante.

and being void is not susceptible of ratification.[215] The following contracts were held to be ultra vires: The offering of a reward;[216] borrowing money to pay expenses of a contested election in regard to the removal of the county seat;[217] to make loans and donations to colleges;[218] the giving away, or exchange of the city streets for other property.[219] Where a municipality has power to provide for a water supply it may employ an engineer to supply plans and specifications, and the contract is not ultra vires, although the building of the waterworks is subsequently enjoined on other grounds than the municipal functions of the municipality.[220] The defense of ultra vires must be raised by pleading.[221] A city is not authorized to bind itself by a contract to furnish water for a number of years, at a fixed rate. But this is not on the ground of ultra vires.[222]

§ **744. Liability of municipality on contracts.**—(a) *For failure to collect assessment:* A contract for a sewer, part of which is to be paid for out of the general sewer fund and the remainder to be assessed against the property benefited, makes the city liable for the whole sum though it is able to collect but part of the assessment.[223] Where a contract is based on a special assessment with a provision waiving all claims or lien against the city except from the collection of the special assessment, the contractor can not recover a general judgment against the city on the ground that its officers failed, or refused, to levy a second assessment after the first had been held invalid.[224] Delay in the collection of an assessment growing out of a mistake in the law rendering it necessary to make a reassessment renders the city liable for the damages caused by such delay.[225] Where improvements are

[215] State v. Murphy, 134 Mo. 548; s. c. 31 S. W. 784; 34 S. W. 51; 35 S. W. 1132.

[216] City of Winchester v. Redmond, 93 Va. 711; s. c. 25 S. E. 1001.

[217] Myers v. City of Jeffersonville, 145 Ind. 431; s. c. 44 N. E. 452.

[218] City of Fulton v. Northern Ill. Coll., 158 Ill. 333; s. c. 42 N. E. 138.

[219] Beebe v. Little Rock, 68 Ark. 39; s. c. 56 S. W. 791.

[220] Harlow v. Borough of Beaver Falls, 188 Pa. St. 263; s. c. 41 Atl. 533.

[221] Brown v. Board &c., 103 Cal. 531; s. c. 37 Pac. 503.

[222] Trustees &c. v. City of Jacksonville, 61 Ill. App. 199.

[223] Addyston Pipe &c. Co. v. City of Corry, 197 Pa. St. 41; s. c. 46 Atl. 1035.

[224] City of Pontiac v. Talbot Pav. Co., 94 Fed. 65; s. c. 36 C. C. A. 88.

[225] Denny v. City of Spokane, 79 Fed. 719. Cf. Reilly v. City of Albany, 112 N. Y. 30; s. c. 19 N. E. 508; City of Leavenworth v. Mills, 6 Kan. 288; City of Leavenworth v. Stille, 13 Kan. 539; Commercial Nat'l Bank v. City of Portland, 24 Or. 188; s. c. 33 Pac. 532; Cumming v. Mayor &c., 11 Paige (N. Y.) 596; City of Memphis v. Brown, 20 Wall. 289, 311; McEwan v. City of Spokane, 16 Wash. 212; s. c. 47 Pac. 433.

made under the assessment plan against property specially benefited, and not at the expense of the city generally, the city is not liable generally for failure duly and without neglect to collect the special assessments.[226] Warrants payable out of a street-grade fund can not be collected from the city generally. And this though the remedy against the special fund be lost.[227] (b) *When officers may bind municipality:* Where street lighting was furnished at the request of certain officials, who had administrative authority under the charter, and the street lighting was absolutely necessary for the city, the court will grant relief.[228] A municipal corporation is liable for the acts of an authorized officer although such officer expended more money than he was authorized to expend.[229] Where the charter intrusts the care of schools to a board of education and its trustees the city is liable for a violation of a contract by them.[230] (c) *Officers not liable when:* Where a person making a contract with village officers knows their official position and of the invalidity of the contract without ratification of the board, and there is absence of proof of an intention to make themselves personally liable, they can not be held personally.[231] (d) *Liability on void contracts:* Where a contract for water supply for more than a year is illegal by reason of not having been submitted to a vote of the people, but the contractor has expended a large amount for a plant, the city is liable for the water actually supplied under such contract in each year.[232] While an executory contract between a city and an alderman will not be enforced, yet, if it has been performed by the alderman, in good faith, and the benefits received by the city, a recovery may be had on the quantum meruit.[233] Although a contract may be invalid the city is bound to pay for the benefits received,[234] as where water is furnished to and used by it,[235] or where

[226] Northwestern L. Co. v. City of Aberdeen, 20 Wash. 102; s. c. 54 Pac. 935.

[227] Rhode Island Mortgage &c. Co. v. City of Spokane, 19 Wash. 616; s. c. 53 Pac. 1104. Under Tex. Rev. St., art. 544–547, the city is primarily liable for the entire improvement ordered, although by the statute the city is made liable for one-third and abutting owners two-thirds: City of Belton v. Sterling (Tex.), 50 S. W. 1027.

[228] North River Elec. &c. Co. v. City of New York, 62 N. Y. 726; s. c. 48 App. Div. (N. Y.) 14.

[229] Geo. F. Blake Mfg. Co. v. Sanitary Dist. &c., 77 Ill. App. 287; s. c. sub nom. Sanitary Dist. &c. v. Geo. F. Blake Mfg. Co., affirmed in 179 Ill. 167; 53 N. E. 627.

[230] Purcell v. Long Island City, 36 N. Y. S. 290; s. c. 91 Hun (N. Y.) 271.

[231] Miller v. Board &c., 37 N. Y. S. 766; s. c. 15 Misc. (N. Y.) 322.

[232] City Council &c. v. Dawson Waterworks Co., 106 Ga. 696; s. c. 32 S. E. 907.

[233] City of Concordia v. Hagaman, 1 Kan. App. 35; s. c. 41 Pac. 133.

[234] Nicholasville Water Co. v. Board &c., 18 Ky. L. 592; s. c. 36 S. W. 549.

[235] Nicholasville W. Co. v. Board &c. (Ky.), 38 S. W. 430.

services have been rendered by an attorney.[236] But a city is not liable on a contract made in violation of the constitution.[237] (e) *Where work and material not in accordance with contract:* Where fraud is not shown in the certificate of performance, or that the work called for was not performed, or that it was not of the general character required, it is not ground for resisting payment that the material and work were not in accordance with the contract.[238] (f) *Work performed under contract:* Where a contractor is in performance of work in grading a street, and the city takes possession for the purpose of laying a sewer and subsequently turns the street over to another to be macadamized, the city is liable for the grading done.[239] (g) *On quantum meruit and valebat:* Where a corporation has power to make a contract but it is executed irregularly and therefore void, recovery may be had on a quantum meruit without showing a ratification if the corporation receives and retains the benefits.[240] Under a continuous contract the acceptance of a portion does not render the city liable on a quantum valebat.[241] (h) *On negotiable bonds:* The city can not escape the payment of an obligation on the ground that negotiable securities were issued therefor instead of non-negotiable.[242] (i) *Liability of city for damages:* Under a contract with the city for grading a street, where no provision is made for the payment of damages

[236] Brand v. City of San Antonio (Tex.), 37 S. W. 340. Where irregularity in the making of a contract makes it impossible to sue upon to enforce the contract there may exist a right of action upon a quantum meruit: Condran v. City of New Orleans, 43 La. An. 1202; s. c. 9 So. 31; Hill v. New Orleans &c. R. Co., 11 La. An. 292; City of Ellsworth v. Rossiter, 46 Kan. 237; s. c. 26 Pac. 674. See also, Butler v. Board &c., 15 Kan. 178; Brown v. City of Atchison, 39 Kan. 37; s. c. 17 Pac. 465; Salomon v. United States, 19 Wall. 17; Commissioners &c. v. Brewer, 9 Kan. 307; Huffman v. Board &c., 23 Kan. 281.

[237] Noel v. City of San Antonio, 11 Tex. Civ. App. 580; s. c. 33 S. W. 263.

[238] People v. Coler, 57 N. Y. S. 461; s. c. 26 Misc. (N. Y.) 509.

[239] City of Dunkirk v. Wallace, 19 Ind. App. 298; s. c. 45 N. E. 614.

[240] Lincoln Land Co. v. Village of Grant, 57 Neb. 70; s. c. 77 N. W. 349.

[241] Berwind v. Galveston &c. Inv. Co., 20 Tex. Civ. App. 426; s. c. 50 S. W. 413. Where a corporation has received the benefits of a contract it is not a defense to show the passage of resolutions limiting expenses, the contractor having no knowledge of such action: Sanitary Dist. &c. v. Geo. F. Blake Mfg. Co., 179 Ill. 167; s. c. 53 N. E. 627.

[242] Pacific Imp. Co. v. City of Clarksdale, 74 Fed. 528. The taking of a bond of indemnity from a railroad company to protect the city from a failure of the railroad company to construct a tunnel under the street in accordance with the ordinance and to indemnify persons against the company's negligence and wrongful acts does not make the city liable to such persons: Terry v. City of Richmond, 94 Va. 537; s. c. 27 S. E. 429.

and the assessment of benefits, and for that reason the performance of the contract is enjoined, the city will be liable to the contractor for damages in the absence of an express provision in the contract or charter exempting the city from liability.[243] Where the city is limited to a maximum expenditure for a specified purpose, not being within the general municipal powers, it is not liable in excess of this sum even to a bona-fide contractor who has performed the contract.[244] (j) *Defenses of municipality:* Where the city granted electric-light and water franchises to certain persons, who proceeded to form a corporation to construct and operate plants, to which was assigned the franchises, and the company thereupon mortgaged its plants, property, and contracts, it was held, in an action to foreclose, which was subsequently made a creditor's bill, and in which case an ancillary bill was filed by the receiver against the city to reach rentals due from it, that it was no defense that the company was not a corporation de jure or de facto.[245] The defense that the city had paid out all the contract price on other claims and had none to pay plaintiff, requires the city to establish that the claims for which the money was paid were legally filed.[246] (k) *Equitable remedies:* Where a city entered into a contract for a fire and police telegraph system, at a time when the city was already indebted beyond the constitutional limit, which was known to both parties, and recovery was refused by the court for the contract price, the contractor is not entitled to file a bill in equity to charge the city with rentals, or to compel it to transfer the system to the contractor as a whole.[247] Facts alleged may not be sufficient to authorize a recovery at law but may be sufficient for equitable relief.[248] (l) *Remedies of contractor:* Where plaintiff had two contracts, one to excavate one street and one to fill another street, the dirt from the former to be used in filling the latter, and he was permitted to perform but a portion of the first contract, his measure of damages is the contract price for the work done and the difference between the cost of excavation and the contract price on the work not done, and in addition the value of the earth that would have been excavated had the contract been completed.[249] Where a street-paving

[243] Ash v. City of Independence, 79 Mo. App. 70.

[244] Black v. Common Council &c., 119 Mich. 571; s. c. 78 N. W. 660.

[245] Cunningham v. City of Cleveland, 98 Fed. 657.

[246] Iowa Brick Co. v. City of Des Moines, 111 Iowa 272; s. c. 82 N. W. 922; Dixon v. City of New York, 63 N. Y. S. 794; s. c. 31 Misc. (N. Y.) 102.

[247] Gamewell &c. Tel. Co. v. City of Laporte, 96 Fed. 664; s. c. 102 Fed. 417; 42 C. C. A. 405.

[248] Kerr v. City of Bellefontaine, 59 Ohio St. 446; s. c. 52 N. E. 1024.

[249] McManus v. City of Philadelphia, 195 Pa. St. 304; s. c. 45 Atl.

contractor suffers damages by reason of the settling of a trench improperly filled by a water board, the board is not liable to the contractor therefor, where the trench was in existence before the paving was done, and the contract was entered into with knowledge of the trench.[250] (m) *Liability for expenses—Medical services:* Where a city charter contains a mandatory provision that certain medical services rendered at the request of the police department shall be paid for at a certain rate, and requires a specified sum to be appropriated therefor, the city is liable, notwithstanding the charter also provides that no expenses shall be incurred by any department or officers without an appropriation previously made,[251] but the city is not liable where its appropriation has been exhausted before the services were rendered. (n) *Liability in case of an independent contractor:* Where plaintiff was injured by dynamite used in excavating a sewer and the evidence showed that the sewer was being constructed by contractors under the supervision of a foreman; that all employes, including plaintiff, were hired and paid by the contractors; and it further appeared that the city exercised no control over the work or the servants, and reserved the right only to see that the work was in accordance with the contract, the city is not liable.[251a]

§ **745. Estoppel.**—Estoppel of municipal corporations generally is elsewhere treated fully and need not be considered here extensively. Where a contract is void because in conflict with the constitution, laws, and public policy, the city may plead the illegality of the contract although fully performed by the contractor;[252] and there is no estoppel when the contract is ultra vires.[253] The fact that a city has

1053; Gamewell &c. Tel. Co. v. City of Laporte, 42 C. C. A. 405; s. c. 102 Fed. 417; Comstock v. Incorporated Village of Nelsonville, 61 Ohio St. 288; 56 N. E. 15.

[250] Grant v. Board of Water Com'rs &c., 122 Mich. 694; s. c. 81 N. W. 969.

[251] Dixon v. City of New York, 63 N. Y. S. 794; s. c. 31 Misc. (N. Y.) 102.

[251a] Staldter v. City of Huntington, 153 Ind. 354; s. c. 55 N. E. 88. Cf. Vincennes Water-Supply Co. v. White, 124 Ind. 376; s. c. 24 N. E. 747; Wabash &c. R. Co. v. Farver, 111 Ind. 195; s. c. 12 N. E. 296; Clark v. Fry, 8 Ohio St. 358; Carman v. Steubenville R. Co., 4 Ohio St. 399; Creed v. Hartmann, 29 N. Y. 591; Storrs v. City of Utica, 17 N. Y. 104; Congreve v. Morgan, 5 Duer (N. Y.) 495; Water Co. v. Ware, 16 Wall. 566; Mayor &c. v. Furze, 3 Hill (N. Y.) 616; Dygert v. Schenck, 23 Wend. (N. Y.) 446; Vanderpool v. Husson, 28 Barb. (N. Y.) 196; Matheny v. Wolffs, 2 Duv. (Ky.) 137; Inhabitants &c. v. Holbrook, 9 Allen (Mass.) 17; Bower v. Peate, L. R. 1 Q. B. D. 321; Ellis v. Sheffield Gas &c. Co., 23 L. J. Q. B. 42.

[252] City Council &c. v. Dawson Water Works Co., 106 Ga. 696; s. c. 32 S. E. 907.

[253] McAleer v. Angell, 19 R. I. 688; s. c. 36 Atl. 588.

received benefits under a contract will not estop it from avoiding the contract if it was made without authority.[254] Where a contract was the result of a compromise between the city and a railroad company, and a bridge, provided for therein, was built by both parties and kept in repair by the city, it does not estop the city from alleging the invalidity of the contract as being ultra vires.[255] And so where an ordinance is necessary to the validity of an improvement, the city is not estopped to assert its invalidity by reason of the work having been done and the benefits having been received.[256] A contract, invalid because made at a special meeting of which certain members had no notice, but which is legitimate and proper and within the scope of the council's power, will be enforced against the city where it has received the benefit of the contract, and the contractor has expended money on the improvements.[257] Where a lessee from the city made permanent improvements on the leased premises under an agreement that the city would refund the value at the termination of the lease, the city will be estopped to claim the contract was ultra vires.[258] Failure on the part of the city to enforce a disputed provision of a contract for a period of five years will work an estoppel on the part of the city to enforce such provision.[259]

[254] McTwiggan v. Hunter, 19 R. I. 265; s. c. 33 Atl. 5.

[255] State v. Minnesota Trans. R. Co., 80 Minn. 108; s. c. 83 N. W. 32.

[256] Wheeler v. City of Poplar Bluff, 149 Mo. 36; s. c. 49 S. W. 1088.

[257] London &c. Co. v. Jellico, 103 Tenn. 320; s. c. 52 S. W. 995; Hitchcock v. Galveston, 96 U. S. 341; San Francisco Gas Co. v. City of San Francisco, 9 Cal. 453; Columbus Waterworks Co. v. City of Columbus, 48 Kan. 99; s. c. 28 Pac. 1097; Moore v. Mayor &c., 73 N. Y. 238; Schipper v. City of Aurora, 121 Ind. 154; s. c. 22 N. E. 878; Gas L. Co. v. Memphis, 93 Tenn. 612; s. c. 30 S. W. 25; Dowell v. City of Portland, 13 Or. 248; s. c. 10 Pac. 308.

[258] Wilkins v. Mayor &c., 30 N. Y. S. 424; s. c. 9 Misc. (N. Y.) 610.

[259] City of St. Louis v. Laclede Gas Light Co., 155 Mo. 1; s. c. 55 S. W. 1003. One who has had the full benefit of property of a corporation under a contract is estopped to question the validity of such contract: Mayor &c. v. Sonneborn, 113 N. Y. 423; s. c. 21 N. E. 121, an action by the city to recover rent for lease of a pier, in which the lessee attempted to defend on the ground that the lease was not made in terms of the statute relating to such matters, which provides that all "leases other than for districts appropriated by said board to special commercial interests shall be made at public auction to the highest bidder." See also, Whitney Arms Co. v. Barlow, 63 N. Y. 62; Rider Life Raft Co. v. Roach, 97 N. Y. 378. A city is not estopped by a resolution of the council reciting a compliance with the contract when in fact there had not been in an action to rescind the contract: City of Galesburg v. Galesburg Water Co., 34 Fed. 675; affirmed in Farmers' Loan &c. Co. v. Galesburg, 133 U. S. 156; s. c. 10 S. Ct. 316.

§ 746. **Letting of municipal contracts.**—There is no subject connected with municipal contracts that has been more fruitful of litigation than the matter of letting such contracts under the statutory provisions usually found regulating the subject. There is great dissimilarity in the statutes, and much confusion in the decisions and but few general principles to be derived therefrom. It seems to be generally admitted, however, that the provisions of the statute prescribing the mode and time of advertising for bids are mandatory, and a condition precedent to the making of a valid contract.[260] (a) *Sufficiency of notice on advertisement:* Where the law requires the advertisement for bids for at least ten days, one insertion ten days before letting is sufficient.[261] Where the statute, or charter, fixes the length of time and method of advertising there can be no radical departure from such requirements. It has been held, however, that although the charter requires advertisement for bids before letting contracts, the design of which being to insure economy and prevent favoritism and corruption, yet in case of emergency, where a delay would result in irreparable injury, a valid contract may be made without such preliminary advertisement if the price is reasonable.[262] Where the assignees of a contractor sue on a contract that has been completed by the board of public works, after abandonment by the contractor, it is of no avail to the plaintiffs that no advertisement for bids was made for the completion of the work as required by law.[263] The New Jersey act of May 22, 1894, authorizing the lighting of public streets and places in cities, towns, townships, boroughs and villages, and to erect and maintain proper appliances, does not require advertisements for proposals nor that the contract be awarded to the lowest bidder. The contract may be awarded with or without proposals, and so long as the contract is bona fide and is made with reasonable discretion and judgment it will not be interfered with.[264] (b) *Letting of contract on bids, not required when:* The statutes, as a rule, do not require all contracts to be let on bids submitted; in fact, where the amount involved is small or the number necessarily

[260] McLoud v. City of Columbus, 54 Ohio St. 439; s. c. 44 N. E. 95.

[261] Woodward v. Collett, 20 Ky. L. 1066; s. c. 48 S. W. 164.

[262] North River Elec. &c. Co. v. City of New York, 62 N. Y. S. 726; s. c. 48 App. Div. (N. Y.) 14.

[263] Jones v. Savage, 53 N. Y. S. 308; s. c. 24 Misc. (N. Y.) 158.

[264] Oakley v. City of Atlantic City, 63 N. J. L. 127; s. c. 44 Atl. 651. Cf. Schefbauer v. Board &c., 57 N. J. L. 588; s. c. 31 Atl. 454; Howell v. City of Millville, 60 N. J. L. 95, 98; s. c. 36 Atl. 691; Foster v. City of Cape May, 60 N. J. L. 78; s. c. 36 Atl. 1089; State v. Inhabitants &c., 52 N. J. L. 483; s. c. 19 Atl. 966. Notice of the improvement for which bids are invited held insufficient in Windsor v. City of Des Moines, 101 Iowa 343; s. c. 70 N. W. 214.

large, it would be necessarily inconvenient so to do. It has been held that a statute which provides that all contracts exceeding $500 shall be let to the lowest bidder does not apply to a contract for hiring pumps at $42.50 per day which may be terminated at any time.[265] Evidently this would not be the case if there was a manifest evasion of the law. It has been held under a city charter that a city council may let contracts for street-improvements without advertising for bids, where the law requiring bids is applicable only to the mayor and a committee, and not applicable to the letting of bids by the council.[266] (c) *Opening of bids:* Where bids were to be received by a certain day and the bids were opened two days later, but the record was silent as to when the bids were handed in, it will be presumed the bid was in apt time.[267] Where the law requires all bids to be publicly opened by the officer in charge of the advertising, and such officer is absent at the time, the bids can not be opened by his secretary,[268] and bids opened in the absence of the officer authorized to open, may be disregarded by him.[269] Where an ordinance provides that advertisements for bids for public improvements shall specify a time and place when and where bids shall be opened by the board of public works in the presence of such persons as shall choose to attend, and the advertisement merely recited that sealed proposals would be received at the office of the board of public works till a certain hour, at which time they were in fact opened in public in the presence of bidders, the assessment was legal.[270] Where the statute requires each bid to contain the full name of every one interested in it, it is mandatory, and this for the reason that it is material to know who are to be held responsible for the faithful performance of the contract.[271] (d) *Acceptance of bid:* After the acceptance of a bid such acceptance can not be reconsidered and revoked, for the reason that it has then become a con-

[265] Sanitary Dist. &c. v. Geo. F. Blake Mfg. Co., 179 Ill. 167; s. c. 53 N. E. 627. Where the charter prohibits the making of a contract where the expense will exceed $500 without letting it to the lowest bidder it has no application to the hiring of pumps to be used by the engineer of the corporation in doing work he was required to do: Geo. F. Blake Mfg. Co. v. Sanitary Dist. &c., 77 Ill. App. 287.

[266] City of Waco v. Chamberlain, 92 Tex. 207; s. c. 47 S. W. 527.

[267] Williams v. Bergin, 129 Cal. 461; s. c. 62 Pac. 59.

[268] People v. Coler, 54 N. Y. S. 785; s. c. 35 App. Div. (N. Y.) 401.

[269] People v. Coler, 54 N. Y. S. 785; s. c. 35 App. Div. (N. Y.) 401.

[270] Cass Farm Co. v. City of Detroit, 124 Mich. 433; s. c. 83 N. W. 108. The minutes of a board must show that bids were opened and declared publicly as required by law or it is prima facie proof that it was not done: Edwards v. Berlin, 123 Cal. 544; s. c. 56 Pac. 432.

[271] Strack v. Ratterman, 18 Ohio C. C. 36.

tract.[272] It has been held, however, that after bids on plans and specifications have been received it is competent for the city to make an agreement with one of the bidders modifying the plans and specifications to the advantage of the city.[273] It will be readily seen that the acceptance of a bid may be fraudulently procured, or under a mistake as to the real parties in interest, and may be rescinded if done promptly. (e) *Competition the design:* The design of such statutes is to secure competition and thereby secure a contract on as favorable terms as possible. The general rule is, therefore, that everything which tends to prevent competition renders the bid invalid. And so a contract for a public improvement which reserves to an officer the power to require a greater or less amount of certain material in the work, thereby affecting the profits on the work, is invalid as calculated to discourage competition.[274] Where the law requires contracts to be let to the lowest bidder it must be done, and it is no excuse that the council has determined by ordinance and agreement to let contracts to no person employing non-union labor.[275] It has been held, however, that an ordinance in relation to the paving of a street, which provides that a particular kind of asphalt shall be used in which there is a monopoly, does not render the ordinance void.[276] And so a city in advertising for bids, if acting in good faith, may contract for the use of such materials as are for the city's interest, although such material is the product of an exclusive manufacture.[277] (f) *Bids based on plans and specifications:* An advertisement for bids which refers to plans and specifications is sufficient,[278] but such specifications

[272] Safety Insulated Wire &c. Co. v. City of Baltimore, 74 Fed. 363; s. c. 42 U. S. App. 64; 20 C. C. A. 453.

[273] Reno W. &c. Co. v. Osburn, 25 Nev. 53; s. c. 56 Pac. 945. As to a state of facts under which an acceptance of a bid will not be binding, see Wilson v. Gabler, 11 S. D. 206; s. c. 76 N. W. 924.

[274] California Imp. Co. v. Reynolds, 123 Cal. 88; s. c. 55 Pac. 802.

[275] Holden v. City of Alton, 179 Ill. 318; s. c. 53 N. E. 556.

[276] Verdin v. City of St. Louis, 131 Mo. 26; s. c. 33 S. W. 480.

[277] Mayor &c. v. Bonnell, 57 N. J. L. 424; s. c. 31 Atl. 408. The petition to and proceedings of a council called for an improvement with bricks made by a certain manufacturer is not void in the absence of proof that they were patented and not generally on sale in the market: Smith v. City of Syracuse, 44 N. Y. S. 852; s. c. 17 App. Div. (N. Y.) 63. But they are void if it is provided that the materials shall be purchased of a certain manufacturer: Larned v. City of Syracuse, 44 N. Y. S. 857; s. c. 17 App. Div. (N. Y.) 19. An agreement between competitors in business that one shall make a bid for both, the work to be divided between them, is not a fraudulent combination such as will render the contract void: Woodward v. Collett, 20 Ky. L. 1066; s. c. 48 S. W. 164.

[278] Bozarth v. McGillicuddy, 19 Ind. App. 26; s. c. 47 N. E. 397; 48 N. E. 1042.

must be on file a reasonable time before the bids are to be received.[279] A material conflict to the disadvantage of the city between a detailed specification furnished with a proposal, and the plans and specifications on which proposals were invited, renders the proposal invalid.[280] Where the charter requires advertisement for proposals for a public work on plans and specifications, or other sufficient description, filed, a mere general specification is not a compliance and does not authorize the acceptance of a bid.[281] The fact that advertisement for bids was made before specifications were prepared and could be seen does not invalidate the proceedings, where a readvertisement for thirty days was made after the specifications were prepared.[282] Where a contract is abandoned and proposals are advertised for the completion of the work according to plans and specifications, it means the specifications of the old contract.[283] (g) *Materials as affecting a bid:* Where the charter requires contracts to be let to the lowest bidder, the city in its advertisement for bids has no right to restrict the use of material to that manufactured by a certain specified firm, as that would prevent free competition, and a fortiori if other firms manufactured as good material as that specified.[284] An advertisement for proposals which fails to state that the successful bidder will be entitled to use certain material, already belonging to the city, will not vitiate the contract made with the lowest bidder by which he is permitted to use such material.[285] The letting of a contract will not be restrained on the ground that there was no competition in the bidding by reason of a monopoly in the sale of some of the material required by the specifications.[286] Where new material is advertised for, second-hand material can not be accepted, without notice to the other bidders.[287] (h) *Award of contract to bidder:* The provisions of the statute relative to the letting of contracts upon bids for public improvements must be strictly followed, and the letting of a contract on terms more favorable than the requirement for bids destroys the benefit of competition and renders the contract illegal and subject to being enjoined.[288]

[279] Smith v. City of Syracuse, 44 N. Y. S. 852; s. c. 17 App. Div. (N. Y.) 63.

[280] State v. City of Passaic, 63 N. J. L. 208; s. c. 42 Atl. 1058.

[281] Ricketson v. City of Milwaukee, 105 Wis. 591; s. c. 81 N. W. 864.

[282] Johnson v. City of Rock Hill, 57 S. C. 371; s. c. 35 S. E. 568.

[283] State v. City of Passaic, 63 N. J. L. 208; s. c. 42 Atl. 1058.

[284] Smith v. Syracuse Imp. Co., 161 N. Y. 484; s. c. 55 N. E. 1077.

[285] Oakley v. City of Atlantic City, 63 N. J. L. 127; s. c. 44 Atl. 651.

[286] Holmes v. Common Council &c., 120 Mich. 226; s. c. 79 N. W. 200. A contract requiring bids may limit the bids to two designated brands if done in good faith: Beazley v. Kennedy (Tenn.), 52 S. W. 791.

[287] Lake Shore Foundry v. City of Cleveland, 8 Ohio C. C. 671.

[288] Wickwire v. City of Elkhart, 144 Ind. 305; s. c. 43 N. E. 216.

The awarding of a contract for lighting the streets is a ministerial act and not legislative,[289] an administrative act and not judicial.[290] Where a contract shows that it was let on bids had for that purpose, in the absence of evidence to the contrary it sufficiently shows that it was by competitive bidding,[291] and where it must be let to the lowest bidder, a presumption will be raised that the trustees did their duty where the record discloses such facts as to warrant such presumption.[292] Where the facts are not sufficient to establish fraud on the part of the council in awarding a contract, the contract will be regarded as valid.[293] Where the city has a right to pay for street lighting out of the current funds or revenues as the services are rendered, and monthly statements were rendered, and payments made, pursuant to a proposition of the light company, but no contract was ever signed by the mayor, or prepared and approved by the city attorney, the contract can not be avoided at the suit of a taxpayer.[294] An assessment for an improvement will not be set aside on the grounds of fraud of the council where the bid is not so high as to warrant a finding of improvidence of the council, the council being aware of no collusion between bidders, although it appears that the bid is forty to fifty per cent. above the fair cash price for the work, but the warrants for the work were at twenty-five to thirty per cent. discount.[295] The award of a contract to one who is slightly in excess of the lowest bid will not in the absence of fraud or bad faith invalidate the contract.[296] Where discretion is vested in an officer he has a right to restrict bidders for supplies to animals killed and dressed in the state.[297] A contract awarded on condition that a bond be furnished by a certain time, or it would be reawarded, followed by default, does not require notice of a reaward to the defaulting bidder.[298] A grant of a franchise to a water-works company without receiving bids as required by the constitution is void.[299] A contract in excess of $500, without advertising for bids as required, is not void where there is

[289] Seitzinger v. Borough of Tamaqua, 187 Pa. St. 539; s. c. 41 Atl. 454.

[290] Adleman v. Pierce (Idaho), 55 Pac. 658.

[291] City of Marshall v. Rainey, 78 Mo. App. 416.

[292] Neff v. Covington Stone &c. Co., 21 Ky. L. 1454; s. c. 55 S. W. 697.

[293] Potts v. Philadelphia, 195 Pa. St. 619; s. c. 46 Atl. 195. The letting of a contract to one not the lowest bidder does not establish fraud, or illegality: Terrell v. Strong, 35 N. Y. S. 1000; s. c. 14 Misc. (N. Y.) 258.

[294] Dallas Elec. Co. v. City of Dallas, 23 Tex. Civ. App. 323; s. c. 58 S. W. 153.

[295] Shannon v. Portland, 38 Or. 382, s. c. 62 Pac. 50.

[296] Kingsley v. Bowman, 53 N. Y. S. 426; s. c. 33 App. Div. (N. Y.) 1.

[297] In re Rooney, 56 N. Y. S. 483; s. c. 26 Misc. (N. Y.) 73.

[298] Barrett v. Ocean City, 62 N. J. L. 588; s. c. 41 Atl. 946.

[299] Nicholasville Water Co. v. Board &c., 18 Ky. L. 592; s. c. 36 S. W. 549.

but one bidder that can perform the contract.[300] The power to award bidders the contract for a public work is lost by a delay of several months.[301] (i) *Letting to lowest bidder:* Where the contract is required to be let to the lowest bidder, whom the council, in its discretion, may deem best, this does not make it mandatory to let to the lowest bidder.[302] Where the contract must be let to the lowest bidder there is no objection in saying that bids in excess of a certain amount for a particular street will not be considered.[303] Where the lowest bid is rejected the bidder has no right of action against the city to recover what would have been his profits had his bid been accepted.[304] Where the law requires a contract to be let to the lowest bidder, and it is let without such bidding, the contractor can not recover. Where it must be let to the lowest bidder, the city may divide the improvement in several parts and let the different parts to different bidders, where the whole improvement will thereby be made at less cost than by a single letting.[305] In the absence of fraud or an abuse of discretion a city need not let a contract to the lowest bidder where the charter does not so prescribe.[306] (j) *Letting to lowest responsible bidder:* Where by charter a contract is to be let to the lowest responsible bidder the word "responsible" does not apply to ability to pay money only, but means ability to respond to the requirements of the contract, regard being had to the subject-matter thereof.[307] "Responsible" may also have

[300] City of Hartford v. Hartford Elec. L. Co., 65 Conn. 324; s. c. 32 Atl. 925.

[301] Pennell v. City of New York, 45 N. Y. S. 229; s. c. 17 App. Div. (N. Y.) 455. Under Cal. St. 1891 the awarding of a contract may be approved by the mayor, or three-fourths of the city council: Greenwood v. Morrison, 128 Cal. 350; s. c. 60 Pac. 971.

[302] Brown v. City of Houston (Tex. Civ. App.), 48 S. W. 760.

[303] Seaboard Nat'l Bank v. Woesten, 147 Mo. 467; s. c. 48 S. W. 939.

[304] Talbot Pav. Co. v. City of Detroit, 109 Mich. 657; s. c. 67 N. W. 979; City Imp. Co. v. Broderick, 125 Cal. 139; s. c. 57 Pac. 776. The letting to one who is not the lowest bidder may be enjoined at the instance of a taxpayer, but not at the instance of an unsuccessful bidder: Times Pub. Co. v. City of Everett, 9 Wash. 518; s. c. 37 Pac. 695; Kerr v. Central Board &c., 25 Pitts. Leg. J. (N. S.) 54. If the requirements as to the proposals for bids are reasonable an injunction will not issue at the suit of a taxpayer to restrain the letting of a contract to a higher bidder where the lowest bidder had not complied with such reasonable requirements: Berghoffen v. City of New York, 64 N. Y. S. 1082; s. c. 31 Misc. (N. Y.) 205.

[305] Jones v. City of Seattle, 19 Wash. 669; s. c. 53 Pac. 1105.

[306] Elliot v. City of Minneapolis, 59 Minn. 111; s. c. 60 N. W. 1081. There are some contracts of a municipality required to be let to the highest bidder, and where this is so the same rules apply: State v. Payssan, 47 La. An. 1029; s. c. 17 So. 481.

[307] People v. Kent, 160 Ill. 655; s. c. 43 N. E. 760.

reference to the judgment and skill of the bidder.[308] Where a bidder is required to give satisfactory proof of his ability properly to perform the work the board of public works can not exercise an arbitrary discretion in the matter.[309] Fixing the minimum price to be paid for labor and awarding a contract on that basis renders the contract void where the contract must be to the lowest responsible bidder.[310] Where by law a contract is to be let to the lowest responsible bidder the city can not impose a condition that each bidder shall agree to employ, or allow the employment of, only such labor as a certain trades council shall designate, or forfeit the contract.[311] (k) *Rejection of bids is judicial:* Where a board in passing upon bids is authorized to require bidders to furnish evidence of ability and financial resources to complete a proposed contract, and to pass upon the sufficiency of such evidence and award the contract, it acts judicially, and its discretion will not be interfered with by the courts, in the absence of fraud, by either mandamus or mandatory injunction.[312] (l) *Where officer is vested with discretion:* Where an officer in the letting of a contract to a bidder is vested with the exercise of official judgment and discretion, as where the contract is to be let to the lowest responsible bidder, courts have no right, in the absence of fraud, to interfere with the exercise of that judgment and discretion. The officers' duty is not merely ministerial and can not be controlled by mandamus.[313] (m) *Giving of bonds, or security:* Where a bond is required but there is no provision as to the amount, or its form, or the time to be given, the officers have power to regulate.[314] It has been held that such provision required

[308] Reuting v. City of Titusville, 175 Pa. St. 512; s. c. 34 Atl. 916. The word "responsible" in the matter of letting bids has reference to pecuniary ability, judgment and skill: Interstate Vitrified Brick &c. Co. v. Philadelphia, 164 Pa. St. 477; s. c. 30 Atl. 383.

[309] McGovern v. Board &c., 57 N. J. L. 580; s. c. 31 Atl. 613.

[310] Frame v. Felix, 167 Pa. St. 47; s. c. 31 Atl. 375.

[311] Elliott v. City of Pittsburg, 6 Pa. Dist. R. 455.

[312] Johnson v. Sanitary Dist., 163 Ill. 285; s. c. 45 N. E. 213; East River Gaslight Co. v. Donnelly, 93 N. Y. 557; People v. Gleason, 121 N. Y. 631; s. c. 25 N. E. 4; Erving v. Mayor, 131 N. Y. 133; s. c. 29 N. E. 1101; State v. McGrath, 91 Mo. 386; s. c. 3 S. W. 846; State v. Commissioners &c., 36 Ohio St. 526; Douglas v. Commonwealth, 108 Pa. St. 559; Hoole v. Kinkaid, 16 Nev. 217.

[313] In re McCain, 9 S. D. 57; s. c. 68 N. W. 163; People v. Kent, 160 Ill. 655; s. c. 43 N. E. 760; Kelly v. City of Chicago, 62 Ill. 279; People v. Mayor &c., 25 Wend. (N. Y.) 680; People v. Common Council &c., 78 N. Y. 33.

[314] Selpho v. City of Brooklyn, 39 N. Y. S. 520; s. c. 5 App. Div. (N. Y.) 529. A statute requiring a bond from a bidder whose bid is accepted is mandatory: Barker v. Southern Const. Co., 20 Ky. L. 796; s. c. 47 S. W. 608.

security with every bid and that the security is to be a guaranty on the bid as well as the performance of the contract.[315] It has been held not to be unreasonable to require a deposit of $100,000 on an expenditure of $7,999,000.[316] Where a bidder was unable to furnish the required deposit when bids were asked for, but is subsequently able to do so, it is no ground for rescinding the contract and reopening bids.[317] A certified check required to be deposited with a bid may be forfeited only where the contract is based on legal proceedings by the authorities.[318] And a contractor refusing to sign a contract because more burdensome than the specifications, is entitled to his deposit.[319] (n) *Municipality not liable for facts not communicated:* The sanitary district of Chicago being represented by trustees is not responsible for the individual knowledge of individual trustees as to materials to be encountered in the process of excavation, and which was not embodied in the profile given for the benefit of bidders and not communicated to the bidder.[320] (o) *Not liable for representations when:* A chief engineer of a sanitary district, whose duty it is to let contracts, is not authorized to make representations and bind the district in regard to the subject-matter for which bids are asked.[321]

[315] Selpho v. City of Brooklyn, 39 N. Y. S. 520; s. c. 5 App. Div. (N. Y.) 529. A charter providing that all contractors shall give bond conditioned for the payment of all claims for materials is a legitimate exercise of legislative power: Wilson v. Webber, 157 N. Y. 693; s. c. 51 N. E. 1094. A person furnishing terra cotta manufactured by him according to plans and specifications which is placed in the building by a contractor is a sub-contractor and required to give bond: People v. Cotteral, 119 Mich. 27; s. c. 77 N. W. 312. A bond given by a contractor to secure the performance of a contract is in effect a bond to secure the performance of the work: City of Fort Madison v. Moore, 109 Iowa 476; s. c. 80 N. W. 527. When suit may be brought on contractor's bond by material men,—see Wilson v. Webber, 157 N. Y. 693; s. c. 51 N. E. 1094. When not,—see Buffalo Cement Co. v. McNaughton, 156 N. Y. 702; s. c. 51 N. E. 1089. And see Baum v. Whatcom Co. &c., 19 Wash. 626; s. c. 54 Pac. 29. Under Kansas City charter the sureties of a contractor are not liable to a sub-contractor for the building of a sewer: Kansas City v. McDonald, 80 Mo. App. 444.

[316] State v. City of Jersey City (N. J.), 42 Atl. 845.

[317] State v. City of Jersey City (N. J.), 42 Atl. 845.

[318] N. P. Perine Contr. &c. Co. v. City of Pasadena, 116 Cal. 6; s. c. 47 Pac. 777.

[319] Colter v. Casteel (Tex. Civ. App.), 37 S. W. 791. Where a successful bidder makes a deposit as a guaranty of good faith on his part and wilfully fails to perform the contract the deposit is forfeited: Mutchler v. Easton City, 9 Pa. Co. Ct. 613; Ex parte Barrell, L. R. 10 Ch. 512; Village of Morgan Park v. Gahan, 35 Ill. App. 646.

[320] Sanitary Dist. &c. v. Ricker, 91 Fed. 833.

[321] Sanitary Dist. &c. v. Ricker, 91 Fed. 833.

CHAPTER XIX.

LEGISLATIVE CONTROL.

SECTION
747. Legislative control subject to limitations.
748. Powers that the state can not relinquish.
749. Impairment of legislative grants.
750. The same subject continued.
751. Remission of forfeitures.
752. Property held for public uses.
753. Tenure of office of municipal officers.
754. Agencies of municipal administration.
755. Diversion of funds.
756. The same subject continued—Public interest paramount to private right.
757. Application of revenues.
758. The same subject continued.
759. Impairment of obligations to individuals.
760. The same subject continued.
761. Impairment of remedies against the corporation.
762. The same subject continued—Control of taxing power limited.
763. Vacating assessments of damages.
764. The rule summarized.

§ 747. **Legislative control subject to limitations.**—The subject of legislative control, so far as the latter operates upon and through the charter, has been discussed in another chapter,[1] and the general rule affirming the supremacy of the legislature over its instrumentalities of government finds application in numerous instances throughout this work. As regards matters of general concern and duties which the people of cities or other municipal corporations owe to the state at large, the control of the state is complete, and no discretionary authority is vested in such corporations. But these corporations, though made use of in state government and in that character subject to state control, have other objects and purposes peculiarly local, in which the state at large, except in conferring the power and regulating its exercise, is legally no more concerned than it is in the individual and private concerns of its several citizens. And as regards property-rights and matters of exclusively local concern, the state has no right to interfere and control by compulsory legislation the action of municipal corporations.[2]

[1] Amendment, Repeal and Forfeiture of Charter, ch. 4, ante.

[2] People v. Common Council &c., 28 Mich. 228; s. c. 15 Am. R. 202, a

§ 748. Powers that the state can not relinquish.—Justice Swayne, speaking upon this subject for the United States supreme court, said: "The legislative power of a state, except so far as restrained by its own constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them or modify their duties. It may also shorten or lengthen the term of service. And it may increase or diminish the salary or change the mode of compensation.[3] The police power of the states, and that with respect to municipal corporations, and the many other things that might be named, are of the same absolute character.[4] In all these cases there can be no contract and no irrepealable law, because they are 'governmental subjects,' and hence within the category before stated. They involve *public interests,* and legislative acts concerning them are necessarily public laws. Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment—neither more nor less. All occupy in this respect a footing of public equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and

well-considered case refusing a mandamus to compel the common council of the city to order the issuing of bonds to purchase lands for a park contracted for by a board of park commissioners under an act of the legislature supposed to have enlarged the powers of this board so far as to authorize them to make a purchase of lands for the city; in other words, to give them a power of taxation; the court holding that while it was within the legislative power to take away as it did from a citizens' meeting, where it was formerly located under a prior act, the right to decide for the city upon the purchase of a public park, and to lodge it with some other proper agent or representative of the local community, the state had no authority to confer such functions upon its own agents, nor by legislative amendment to enlarge their powers upon these park commissioners, who were originally state appointees and had become representatives of the city only to the extent that their authority was recognized under the original statute by the representatives of the city, which conferred upon them no such power. See "Legislative Control of Municipal Corporations," by W. P. Wade, Esq., 8 Cent. L. J. 3; and as to compulsory legislation, People v. Mahaney, 13 Mich. 481; People v. State Treasurer, 23 Mich. 499. As to the private rights of corporations as distinguished from public, see Small v. Inhabitants &c., 51 Maine 359; Philadelphia v. Fox, 64 Pa. St. 169; Western College v. City of Cleveland, 12 Ohio St. 375; San Francisco Gas Co. v. City of San Francisco, 9 Cal. 453; Oliver v. Worcester, 102 Mass. 489.

[3] See Butler v. Pennsylvania, 10 How. 402.

[4] See Cooley Const. Lim. 232, 342; Regents v. Williams, 9 Gill & J. (Md.) 365.

present exigencies touching the subject involved may require. A different result would be fraught with evil. All these considerations apply with full force to the times and places of holding courts. They are both purely public things, and the laws concerning them must necessarily be of the same character. If one may be bargained about so may the other. In this respect there is no difference in principle between them."[5]

§ 749. **Impairment of legislative grants.**—A legislative grant is an executed contract, and as such is within the clause of the constitution of the United States which prohibits the states from passing any law impairing the obligation of contracts. It can not, therefore, be destroyed and the estate be divested by any subsequent legislative enactment.[6] "And though a municipal corporation is the creature of the legislature, yet when the state enters into a contract with it, the subordinate relation ceases, and that equality arises which exists between all contracting parties. And however great the control of the legislature over the corporation, it can be exercised only in subordination to the principle which secures the inviolability of contracts."[7]

[5] Newton v. Commissioners, 100 U. S. 548, an action to restrain the removal of a county seat, in which case the court applied the principles of the text and held that a law establishing a county seat of a county in a town upon condition that the citizens of the town should give a bond in a fixed sum for building a court-house, the condition precedent having been complied with, was not a contract which would disable the legislature subsequently to legislate for its removal to another town. See also, Armstrong v. Board &c., 4 Blackf. (Ind.) 208; Elwell v. Tucker, 1 Blackf. (Ind.) 285 (in which the Indiana court said:—"The establishment of the time and place of holding courts is a matter of general legislation, respecting which the act of one session of the general assembly can not be binding on another"); Adams v. Logan Co., 11 Ill. 336; Bass v. Fontleroy, 11 Tex. 698.

[6] Grogan v. City of San Francisco, 18 Cal. 590, holding it not in the power of the legislature to divest property which is not held in trust for public municipal purposes. See also, Benson v. Mayor &c., 10 Barb. (N. Y.) 223.

[7] Field, C. J., in Grogan v. City of San Francisco, 18 Cal. 590, 613. In Spaulding v. Andover, 54 N. H. 38, an act which declared a portion of a fund which had been assigned to a town "to belong to and be the property of" certain individuals was held to be invalid as violating a contract between the state and the town which was the effect of a statute under which the state issued bonds and assigned to the town its portion "to be devoted exclusively toward the reimbursement of the expenditures incurred by the town for war purposes during the rebellion." The court said:—"[The assignment of these bonds] was an unqualified and unincumbered grant [of the same to the town], possessing all the incidents of an executed and irrevocable contract."

§ 750. **The same subject continued.**—The supreme court of the United States sustained a statute of Connecticut which discontinued a ferry in which a town had a half-interest on the ground that there was no contract between the state and the town by which the latter could claim a permanent right to the ferry, the nature of the subject-matter of the grant and the character of the parties to it both showing that it was not such a contract as was beyond the interference of the legislature.[8]

§ 751. **Remission of forfeitures.**—A county does not, nor do any of its citizens or its governing authorities, acquire a right of property or any separate or private interest in a forfeiture named in an act of the legislature authorizing a subscription by the state to the stock of a private corporation, if the corporation fails to do a certain thing,

[8] Town of East Hartford v. Hartford Bridge Co., 10 How. 511. Woodbury, Justice, said:—"The doings of the legislature must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded. The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights and duties modified or abolished at any moment by the legislature. They are incorporated for public and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders nor joint partners in any corporate estate which they can sell or devise to others, or which can be attached and levied on for their debts. Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and therefore to be considered as not violated by subsequent legislative changes. It is hardly possible to conceive the grounds on which a different result could be vindicated without destroying all legislative sovereignty and checking most legislative improvements and amendments, as well as supervision over its subordinate public bodies. Thus to go a little into details, one of the highest attributes of a legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand. It can neither devolve these duties permanently on other public bodies, nor permanently suspend or abandon them itself, without being usually regarded as unfaithful, and, indeed, attempting what is wholly beyond its constitutional competency. It is bound, also, to continue to regulate such public matters and bodies, as much as to organize them at first. Where not restrained by mere constitutional provision, this power is inherent in its nature, design and attitude, and the community possess as deep and permanent interest in such power remaining in and being exercised by the legislature when the public progress and welfare demand it, as individuals or corporations can in any instance possess in restraining it." See also, remarks of Taney, C. J., in Charles River Bridge v. Warren Bridge, 11 Peters 420, 547, 548.

though the act declares it for the use of the county. A proviso of that kind in an act of the legislature is a measure of state policy which the state has a right to change if the policy is afterwards discovered to be erroneous.[9]

§ 752. **Property held for public uses.**—It is within the power of the legislature to relieve a city or other municipal corporation from the trust to hold real property condemned or purchased for a public use only, and to authorize it to sell and convey the same.[10] So, also, the legislature may sanction a sale of such property, a change in its character from realty to personalty, and the devotion of the avails of such a sale to general or special purposes.[11] The legislature having declared in a prior act authorizing the purchase of lands for a public use by a municipality that the holders of the bonds issued and sold by it to pay for such lands should have a lien upon the lands to secure the payment of the bonds, it can not by a subsequent act empower the municipality to sell such lands and make a title freed from the lien of such

[9] Maryland v. Baltimore &c. R. Co., 3 How. 534, in which it was urged that the county had acquired a beneficial right to the $1,000,000 named in the act by reason of the failure of the railroad company to construct their road through the county; that its right was a vested right; in short, that it was a contract, and that the legislature had no power by a subsequent act to release the corporation from its payment and order a discontinuance of the suit which the county had instituted for the amount. The supreme court of the United States held that it was a penalty inflicted upon the corporation as a punishment for disobeying the law, and the assent of the company to it, as a supplemental charter, was not sufficient to deprive it of the character of a penalty. A clause of forfeiture in a law is to be construed differently from a similar clause in an engagement between individuals. A legislature can impose it as a punishment, but individuals can only make it a matter of contract. The legislature has a right to remit a penalty imposed by law. In Holliday v. People, 10 Ill. 214, it was held that the legislature might, after verdict, release a penalty in a popular action brought for the benefit of a county, a county being a public corporation subject completely to the control of the legislature, and the acts of the executive pursuant to the provisions of the constitution. See also, Coles v. Madison Co., Breese (Ill.) 154; Conner v. Bent, 1 Mo. 235. In the latter case it was held that the legislature was competent to relieve from a forfeiture, even where the money was going to a county, and that after judgment; also, that where money accrues to a county (this was an action for money collected as district taxes claimed not to have been paid over), it can not be said to be so vested as to prevent the control of the legislature, as the legislature has power over the counties and all things that belong to them in that capacity simply as such.

[10] Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; s. c. 6 Am. R. 70. See also, Nicoll v. New York &c. R. Co., 12 N. Y. 121.

[11] De Varaigne v. Fox, 2 Blatchf. 95.

bondholders. The security can not be taken away without impairing the obligation of the contract, which is not one between the corporation and the state, but between the creditor of the one part, and the corporation and the state of the other part.[12]

§ 753. **Tenure of office of municipal officials.**—It has been held in Kentucky that the provisions of the state constitution as to courts of cities and the election of judges were never intended to take from the legislature the power to enlarge the boundaries of towns in existence at the time of the adoption of the constitution, or to alter or abolish the courts therein, when the lawmaking power should deem it for the benefit of the inhabitants.[13]

§ 754. **Agencies of municipal administration.**—Although the power, under its charter and subsequent legislation, has been placed in the governing authorities of a municipal corporation to appoint

[12] Brooklyn Park Com'rs v. Armstrong, 45 N. Y. 234; s. c. 6 Am. R. 70. See also, Curran v. Arkansas, 15 How. 304-314; McGee v. Mathis, 4 Wall. 143; Wabash &c. Co. v. Beers, 2 Black 448.

[13] Boyd v. Chambers, 78 Ky. 140, in which the right to the office of a city judge elected in accordance with the terms of a new charter of a city reincorporated was sustained over the claims of one elected when the provisions of the constitution governed in the matter. The court of appeals said:—"Cities and towns are mere creatures of the legislature, and the power exists in that department of the state government not only to abolish the courts, but to destroy the existence of the corporation by a repeal of its charter. These inferior courts not being the creatures of the constitution, it was never intended to deprive the legislature of the power to regulate and control by proper legislation all the machinery necessary to the existence of such municipalities." Again they said:—"And when its [the city's] charter has been repealed and a new and distinct act of incorporation obtained [which was done here], it is the creation of a new city government, with its civil and police jurisdiction as well as the manner of electing all its officers controlled by its charter, when not in violation of the constitution." In Rutgers v. Mayor &c., 42 N. J. L. 51, it was held to be in the power of the legislature of New Jersey to enact a law which was supplemental to an act which had established a district court in cities having fifteen thousand inhabitants. The supplemental act changed the former by substituting twenty thousand inhabitants. The ground of the ruling was that district courts are inferior courts, which the legislature could establish, alter or abolish at its discretion, as the public good might require; and if in its discretion the court was abolished, the term of service of its officers was thereby terminated. The effect of the supplemental act, as the city did not have twenty thousand inhabitants, was to abolish the court and terminate the term of office of the relator, who applied for mandamus to compel the payment of his salary as district judge after the passage of the supplemental act.

the officers of any department of its government, there remains in the legislature the power, to be exercised whenever it deems that the public welfare requires it, to create by legislative enactment a board for the government of that particular department, to appoint the members of the board, and to define its duties and delegate to it the powers necessary to the administration of that department.[14] That the constitution of a state mentions and recognizes any particular municipal corporation does not make the charter of that corporation a constitutional charter so as to place it beyond the reach of legislative power.[15] The doctrine that there is a fundamental principle of right and justice, inherent in the nature and spirit of the social compact, that rises above and restrains the power of legislation, can not be applied to the legislature when exercising its sovereignty over public charters, granted for the purpose of government.[16]

§ **755. Diversion of funds.**—It was urged in an Illinois case that money appropriated by an act to establish and maintain a general system of internal improvements to the different counties through which no railroad or canal was provided to be made, when received by the county, became its property for the use of the inhabitants thereof and was beyond legislative control. The supreme court held that this money was subject to legislative control, and until definitely appropriated it might be resumed or diverted at the will of the legislature.[17]

[14] Mayor &c. v. State, 15 Md. 376.

[15] Mayor &c. v. State, 15 Md. 376. This ruling was based upon the doctrine that the power to govern belongs to the people, and it is their duty to exercise it for the common good, and being under that obligation, it is not to be assumed that they have impaired the means of performing the duty by parting with the power to any division of the body politic.

[16] Mayor &c. v. State, 15 Md. 376.

[17] Richland Co. v. Lawrence Co., 12 Ill. 1. The court said:—"There was no contract here between the state and Lawrence county, either at the time the appropriation was made or when the county received the money. The county was the mere agent of the state for the disbursement of a certain amount of the money of the state as she directed. That the state may make a contract with or a grant to a public municipal corporation, which it could not subsequently impair or resume, is not denied; but in such case the corporation is to be regarded as a private company. A grant may be made to a public corporation for purposes of private advantage, and although the public may also derive a common benefit therefrom, yet the corporation stands on the same footing as respects such grants as would any body of persons upon whom like privileges were conferred. Public or municipal corporations, however, which exist only for public purposes and possess no power except such as are bestowed upon them for public political purposes, are subject at all times to the control of the legislature, which may alter, modify or

§ 756. The same subject continued—Public interest paramount to private right.—A municipal officer has no vested right of property in any portion of a fund of the corporation which is set apart as a fund for the relief of disabled or retiring officers of the class to which he belongs, which results from an authority given to the treasurer of the corporation by a statute fixing the compensation of such officers, to retain a certain amount from their compensation for this purpose. The effect of the provisions of such a statute is an appropriation by the state each month to the creation of the fund for the purposes designated in the statute, and until used for these purposes it can be transferred to other parties and applied to different purposes by the legislature.[18]

§ 757. Application of revenues.—The revenues of a county are not the property of the county in the sense in which the revenue of a private corporation is regarded; and the power of the legislature to direct their application is plenary. A county being a public corporation, which exists only for public purposes, connected with the administration of the state government, it follows that such a corporation, and of course its revenue, are subject to the control of the legislature, and when the legislature directs the application of its revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created upon the county.[19]

abolish them at pleasure: 2 Kent Com. 305; Bailey v. Mayor &c., 3 Hill (N. Y.) 531."

[18] Pennie v. Reis, 132 U. S. 464; s. c. 10 S. Ct. 149. Field, Justice, said: —"The direction of the state, that the fund should be one for the benefit of the police officer or his representative under certain conditions, was subject to change or revocation at any time at the will of the legislature. There was no contract on the part of the state that its disposition should always continue as originally provided. Until the particular event should happen upon which the money or a part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was, until then, a mere expectancy created by the law and liable to be revoked or destroyed by the same authority."

[19] Board &c. v. City of Springfield, 63 Ill. 66. In People v. Power, 25 Ill. 187, the supreme court of Illinois sustained the validity of an act of the legislature which provided that the county in which a city was situated, out of taxes collected as ordered by the act, should pay over to the city certain portions of the revenue realized from the taxes. It was especially urged before the court that the legislature could not control the revenue of a county, such revenue being the property of the counties, not to be taken from them without their consent, and to be used and appropriated in such manner only as the county courts of the respective counties might direct; that to do so would violate the constitutional provisions as to laws impairing the obligation of contracts. Upon this point the court said:—

§ 758. The same subject continued.—The power of appropriation which a legislature can exercise over the revenues of the state for any purpose, which it may regard as calculated to promote the public good, it can exercise over the revenues of a county, city or town, for any purpose connected with the present or past condition, except as such revenues may by the law creating them be devoted to special purposes.[20]

§ 759. Impairment of obligations to individuals.—The implied contract which is deemed to arise out of the acceptance of a charter by a municipal corporation is a contract between the city and the state, and not between the city and individuals, and is not "impaired" by a statute exempting the corporation from liability for torts.[21] An act

"The whole state has an interest in the revenue of a county, and for the public good the legislature must have the power to direct its application. The power conferred upon a county to raise a revenue by taxation is a political power, and its application, when collected, must necessarily be within the control of the legislature for political purposes."

[20] This rule was declared by Field, J., in People v. Burr, 13 Cal. 343, 351. See also, Town of Guilford v. Board &c., 13 N. Y. 143; People v. Mayor &c., 4 Comst. (N. Y.) 419; Thomas v. Leland, 24 Wend. (N. Y.) 65; Shaw v. Dennis, 5 Gilm. (Ill.) 405; City of Bridgeport v. Housatonic R. Co., 15 Conn. 475, 492; Inhabitants &c. v. County Com'rs &c., 13 Pick. (Mass.) 60; Truchelut v. City Council &c., 1 N. & Mc. (S. C.) 227; Wilkinson v. Leland, 2 Peters 627, 661, 662; Morris v. People, 3 Denio (N. Y.) 381; Grant v. Courter, 24 Barb. (N. Y.) 232; Benson v. Mayor &c., 24 Barb. (N. Y.) 248; Clark v. City of Rochester, 24 Barb. (N. Y.) 446; Sharpless v. Mayor &c., 21 Pa. St. 147; Moers v. City of Reading, 21 Pa. St. 188; Cass v. Dillon, 2 Ohio St. 607; Cincinnati &c. R. Co. v. Commissioners &c., 1 Ohio St. 77; People v. Morris, 13 Wend. (N. Y.) 325; People v. Mayor &c., 25 Wend. (N. Y.) 680; People v. Draper, 25 Barb. (N. Y.) 344; State v. Baltimore &c. R. Co., 12 Gill & J. (Md.) 399; Creighton v. Board &c., 42 Cal. 446 (in which it was held that the power of the legislature to appropriate the moneys of the municipal corporations in payment of claims, ascertained by it to be equitably due to individuals, though such claims be not enforceable in the courts, depends largely upon the legislative conscience and will not be interfered with by the judicial department, unless in exceptional cases); People v. Board &c., 11 Cal. 206; People v. Haws, 37 Barb. (N. Y.) 440; Stillwell v. Mayor &c., 19 Abb. Pr. (N. Y.) 376; Hobart v. Supervisors, 17 Cal. 24; People v. Pacheco, 27 Cal. 175, 209; People v. Stewart, 28 Cal. 395; Beals v. Board &c., 35 Cal. 624; Davidson v. Mayor &c., 27 How. Pr. (N. Y.) 342.

[21] Gray v. City of Brooklyn, 10 Abb. Pr. (N. S.) (N. Y.) 186. The section of the act, amendatory of the charter of the city, under consideration, which exempted the city from liability for non-feasance, etc., of city officers, was held constitutional; and the court further said the section was intended, not to divest persons affected thereby of their rights, but to change and limit their remedies.

of the legislature establishing a board of public works for a city can not be held invalid on the ground that it divests old boards, or the city corporation, or the common council, of the title to property, and transfers it to and vests it in such a board of public works.[22]

§ 760. **The same subject continued.**—If a contract when made is valid under the constitution and laws of a state, as they have been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by the United States supreme court as establishing its invalidity.[23]

[22] People v. Hurlbut, 24 Mich. 44, 73, Christiancy, J., saying:—"All those previous boards and the city corporation itself held whatever property they did hold in the right, and for the public benefit, of the city, as a public trust for municipal purposes; and it was clearly competent for the legislature to transfer it to another public board, to be held in the same manner, for the same public use and benefits." In Western Sav. &c. Society v. City of Philadelphia, 31 Pa. St. 185, the supreme court of the state of Pennsylvania affirmed the granting of an injunction on complaint of the society to restrain the city from an election of a number of trustees of a loan fund in accordance with an act passed by the legislature, which the court held not to be in the power of the legislature, as it impaired a contract made by the city with reference to the organization of a gas-works company, on the principle that whenever a municipal corporation engages in things not public in their nature it acts as a private individual,—no longer legislates, but contracts,—and is as much bound by its engagements as a private person.

[23] Olcott v. Supervisors, 16 Wall. 678, in which the court applied the principles stated in the text, and held an act of the legislature of Illinois, authorizing a vote of the people of a particular county upon the question whether they would aid the building of a certain railroad, and, if they voted in favor of aiding, authorizing the issue of county orders for money to aid in the building, to have been a proper exercise of legislative authority, and the county charged on such orders issued by it and given to the road by way of donation. See also, Chicago v. Sheldon, 9 Wall. 50; Louisiana v. Pilsbury, 105 U. S. 278; Livingston Co. v. Darlington, 101 U. S. 407; Havemeyer v. Iowa Co., 3 Wall. 294; Thomson v. Lee, 3 Wall. 327; Gelpcke v. City of Dubuque, 1 Wall. 175; Butz v. City of Muscatine, 8 Wall. 575; Mitchell v. Burlington, 4 Wall. 270. In Burton v. Town of Koshkonong, 4 Fed. 373, it was held that if a statute which provided against interest upon interest was intended and did operate, so as to affect the rate of interest upon coupons of the bonds of this town,—a contract made before its passage, it would be such a change in the remedy as practically to cut off a portion of the cause of action or render the contract of less available worth, and was as much within the constitutional provision inhibiting laws impairing the obligation of contracts as if it affected the contract directly, and judgment was given for the plaintiff. In United States v. Lincoln Co., 5 Dill. 184, it was held that an act of the legislature.

§ 761. Impairment of remedies against the corporation.—If a municipality enters into a contract under a supposed power to pay for improvements by an assessment upon property-owners presumably benefited by such improvements, and upon its afterwards appearing that there was no such power in the corporation, the legislature passes a statute empowering the municipality to levy a tax to pay for such improvements, a contractor who has reduced his claim for such work to judgment against the corporation has a vested right under that statute to a remedy to compel the corporation to levy such a tax that the legislature can not take away by subsequent legislation, under the constitutional provision prohibiting legislation which will impair contracts.[24]

§ 762. The same subject continued—Control of taxing power limited.—The supreme court of the United States upon this subject has said: "The argument in support of the act [a statute of Louisiana authorizing the "premium bond" plan for settling the bonded and floating debts of the city of New Orleans] is substantially this: That the taxing power belongs exclusively to the legislative department of the government, and when delegated to a municipal corporation may, equally with other powers of the corporation, be revoked or restricted at the pleasure of the legislature. It is true that the power of taxa-

if it applies to county bonds issued before its passage, and takes away the power from the county court to levy taxes to pay these bonds, and as a result the right of the holder of a judgment based upon such bonds to compel a levy of a tax by mandamus to the county court, was in conflict with the constitution as to impairing the obligation of contracts.

[24] Memphis v. United States, 97 U. S. 293. See also, Von Hoffman v. City of Quincy, 4 Wall. 535. In Lansing v. County Treasurer, 1 Dill. 522, a statute of Iowa which discriminated specially against taxes levied to pay judgments on bonds issued by municipal corporations in aid of railroads was, in view of the laws in force when the bonds were issued, held to be unconstitutional and void as impairing the obligation of contracts. In Pereles v. City of Watertown, 6 Biss. 79, a Wisconsin statute of limitations so far as it affected municipal bonds issued before its passage was held to be unconstitutional and void. Hopkins, J., held that in passing a statute of limitations the legislature must allow a reasonable time within which to prosecute existing causes of action; and as to what constitutes such reasonable time the legislature was not the exclusive authority. The period fixed by the legislature is subject to review by the court, and if they deem it unreasonable they will disregard it as impairing the obligation of contracts. A limitation to one year in municipal bonds issued for negotiation in a foreign market the judge regarded as clearly unreasonable and unconstitutional. It amounted to a destruction of the contract.

tion belongs exclusively to the legislative department, and that the legislature may at any time restrict or revoke at its pleasure any of the powers of a municipal corporation, including among others that of taxation, subject, however, to this qualification, which attends all state legislation, that its action in that respect shall not conflict with the prohibitions of the constitution of the United States, and, among other things, shall not operate directly upon contracts of the corporation, so as to impair their obligation by abrogating or lessening the means of their enforcement. Legislation producing this latter result, not indirectly as a consequence of legitimate measures taken, as will sometimes happen, but directly by operating upon those means, is prohibited by the constitution, and must be disregarded—treated as if never enacted—by all courts recognizing the constitution as the paramount law of the land. This doctrine has been repeatedly asserted by this court when attempts have been made to limit the power of taxation of a municipal body, upon the faith of which contracts have been made, and by means of which alone they could be performed. So long as the corporation continues in existence the court has said that the control of the legislature over the power of taxation delegated to it is restrained to cases where such control does not impair the obligation of contracts made upon a pledge, expressly or impliedly given, that the power should be exercised for their fulfilment. However great the control of the legislature over the corporation while it is in existence, it must be exercised in subordination to the principles which secure the inviolability of contracts."[25]

§ **763. Vacating assessments of damages.**—The effect of a law which empowers a municipality to condemn property in the broaden-

[25] Wolff v. New Orleans, 103 U. S. 358. See also, Von Hoffman v. City of Quincy, 4 Wall. 535. In National Bank v. Sebastian Co., 5 Dill. 414, an action by the bank upon county warrants issued by the county in a regular manner, it was held that a statute of Arkansas which was passed by the legislature after the institution of this suit in the federal court, declaring counties no longer bodies corporate and suable upon their contracts, being evidently intended to deprive parties of the right to sue counties in the federal court, impaired the obligation of a contract; and Parker, Judge, extracted from the case of Edwards v. Kearzey, 96 U. S. 595, as to what constitutes the obligation of a contract, as follows:—"The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it the contract, as such, in the view of the law, ceases to be, and falls into the class of 'those imperfect obligations,' as they are termed, which depend for their fulfilment upon the will and conscience of those upon whom they rest. The ideas of right and remedy are inseparable."

ing of its streets, upon that being done, and a commission appointed under the law assessing and fixing the compensation to the landowner, is not to divest the owner at once of his property and to vest in him a right to the amount fixed as his compensation, such that the legislature may not provide for a vacating of an order of confirmation of the report of the commission in the matter, and submit to the court whether or not there had been error, mistake, irregularity and illegal acts in the proceedings.[26]

§ 764. **The rule summarized.**—A municipal corporation, being a mere agent of the state, stands in its governmental or public character in no contract relation with its sovereign, at whose pleasure its charter may be amended, changed or revoked without the impairment of any constitutional obligation; but such a corporation in respect of its private or proprietary rights and interests may be entitled to constitutional protection.[27] It was held by the supreme court of the

[26] Garrison v. City of New York, 21 Wall. 196, in which it was held that in the proceeding to condemn property for public use there is nothing in the nature of a contract between the owner and the state or corporation which the state in virtue of her right of eminent domain authorizes to take the property; all that the constitution of the state or of the United States or justice requires in such cases being that a just compensation shall be made to the owner; his property can then be taken without his assent. The court said:—"The proceeding to ascertain the benefits or losses which will accrue to the owner of the property when taken for public use, and thus the compensation to be made to him, is in the nature of an inquest on the part of the state, and is necessarily under her control. It is her duty to see that the estimates made are just, not merely to the individual whose property is taken but to the public who is to pay for it. And she can to that end vacate or authorize the vacation of any inquest taken by her direction to ascertain the particular facts for her guidance, where the proceeding has been irregularly or fraudulently conducted or in which error has intervened and order a new inquest, provided such methods of procedure be observed as will secure a fair hearing from the parties interested in the property." See also, Matter of Broadway, 61 Barb. (N. Y.) 483; s. c. 49 N. Y. 150.

[27] This doctrine, first declared in Dartmouth College v. Woodward, 4 Wheat. 518, 660, 661, restated in East Hartford v. Hartford Bridge Company, 10 How. 511, 533, 534, has been reiterated in New Orleans v. New Orleans Water-Works Co. and Conery v. New Orleans Water-Works Co., 142 U. S. 79; s. c. 12 S. Ct. 142; in which case the city had under an act of the legislature made a contract for a supply of water with the water-works company, and it was urged by the city that a subsequent act of the legislature which required the city to make a proper compensation to the company for water furnished, or the company should not be compelled to deliver the water to the city, impaired the first contract. In Commissioners &c. v. Commissioners &c., 92 U. S. 307, 311, it was held that the legislature had power to di-

United States that a municipal corporation could not claim that a contract between it and a private corporation had been impaired by a subsequent act of the legislature, where this contract, which was in reality one between the state and the private corporation, had been adjudged in the state courts to be ultra vires; also, that as the city had repudiated its contract by bringing suit against the private corporation for its taxes, it was estopped from the claim of impairment of the contract by subsequent legislation when such legislation was rendered necessary by or at least was the natural outgrowth of its own repudiation of the contract.[28]

minish or enlarge the area of a county whenever the public convenience or necessity required it. In Williamson v. New Jersey, 130 U. S. 189, 199; s. c. 9 S. Ct. 453, it was held that the power of taxation on the part of a municipal corporation is not private property or a vested right of property in its hands, but the conferring of such power is an exercise by the legislature of a public and governmental power which can not be imparted in perpetuity, and is always subject to revocation, modification and control, and is not the subject of contract. In Essex Public Road Board v. Skinkle, 140 U. S. 334; s. c. 11 S. Ct. 790, it was held that an executive agency created by a state for the purpose of improving public highways, and empowered to assess the cost of their improvement upon adjoining lands and to purchase such lands as were delinquent in the payment of the assessment, did not by such purchase acquire a contract right in the land so bought which the state could not modify without violating the provisions of the constitution of the United States.

[28] New Orleans v. New Orleans Water-Works Co. and Conery v. New Orleans Water-Works Co., 142 U. S. 79; s. c. 12 S. Ct. 142.

CHAPTER XX.

TORTS AND CRIMES.

SECTION

765. Torts by the sovereign power.
766. The state not liable for officers' torts—No respondeat superior.
767. Suits against United States—Court of claims.
768. Suits against New York—Board of claims.
769. Counties, etc., as divisions of the state.
770. The same subject continued.
771. Non-liability of New England towns.
772. Liability of New York towns.
773. Liability of towns, etc., as to special duties.
774. Non-liability of school districts and drainage districts.
775. Non-liability for separate boards and bodies.
776. Non-liability for torts of independent officers.
777. The same subject continued—Who are independent officers.
778. The same subject continued—Applied in New York city, etc.
779. Liability of municipal corporations in tort—General principles.
780. Liability in performance of public or governmental functions.
781. Duties which are mandatory and discretionary.
782. Duties legislative or judicial.
783. Liability for torts of public officers.
784. Liability for torts of officers not public.
785. Liability in making improvements, etc.

SECTION

786. Torts in diverting watercourses, surface water, etc.
787. Respondeat superior not applicable to public officers.
788. Negligence as an element of tort.
789. Liability for collision of vessels.
790. Torts of independent contractor.
791. Miscellaneous matters in relation to torts.
792. Non-liability for firemen.
793. Non-liability for police.
794. Liability for acts of mobs.
795. Private interests must yield to public.
796. The same subject continued—Destroying buildings to check fire.
797. Non-liability for negligence in public service.
798. Liability in matters of arrest.
799. Non-liability as to jails.
800. Non-liability as to hospitals.
801. Non-liability as to fire-works.
802. Liability as to city wells and water.
803. Non-liability to trespassers.
804. Liability for nuisances.
805. Municipal liability in general.
806. Chartered cities, etc., distinguished from counties, etc.—The conflict.
807. Municipal liability in exercise of private powers.
808. Liability commensurate with duty.
809. Municipal liability as to water front.

SECTION
810. Liability for fright of horses.
811. Municipal liability for acts of officers and agents.
812. Not liable for ultra vires acts of officers.
813. Non-liability in the exercise of discretionary powers.
814. The same subject continued—New York and Georgia rule.
815. The same subject continued—Drainage.
816. Non-liability for errors of judgment.
817. Liability for trespass.
818. Liability for waste.
819. Liability after notice—Implied notice.
820. The same subject continued—Statutory notice.
821. The same subject continued—New York decisions.
822. Impeaching municipal legislative acts for fraud.
823. Indictment for torts.
824. Not indictable for felony.

§ 765. Torts by the sovereign power.—While the maxim that the king can do no wrong is deemed not to apply to the United States or the several states[1] in their character of public corporations,[2] it is obvious enough on general principles that they should not be subject to prosecution in the courts of their own creation for such wrongs as they may commit,[3] without their consent to such prosecution duly expressed by statute.[4] The liabilities of the state, being created only by its legislature, may be revoked by the same body whenever the public interest requires.[5] The legislature of a state may keep within the letter of the constitution and bill of rights to which it is subject, and yet with impunity pass laws which are unjust and oppressive to individuals.[6]

[1] Langford v. United States, 101 U. S. 341.

[2] United States v. Hillegas, 3 Wash. C. C. 70. While generally the word "corporation" as used in statutes does not include a state, yet in its more extensive meaning, both the United States and the several states may be termed corporations: Georgia v. Atkins, 35 Ga. 315.

[3] "We consider it to be a fundamental principle that the government can not be sued except by its own consent, and certainly no state can pass a law which would have any validity for making the government suable in its courts:" Carr v. United States, 98 U. S. 433; United States v. Lee, 106 U. S. 196, 204; s. c. 1 S. Ct. 240; The Siren, 7 Wall. 152; The Davis, 10 Wall. 15. "The state is not liable for the negligence or misfeasance of its agents unless such liability has been voluntarily assumed by it by legislative enactment:" Lewis v. State, 96 N. Y. 71; People v. Dennison, 84 N. Y. 272.

[4] Carr v. United States, 98 U. S. 433, 437.

[5] Ex parte State, 52 Ala. 231; Vandyke v. State, 24 Ala. 81; Beers v. Arkansas, 20 How. (U. S.) 527. See also, Chisholm v. Georgia, 2 Dallas 419; Hollingsworth v. Virginia, 3 Dallas 378; Platenius v. State, 17 Ark. 518.

[6] In Bertholf v. O'Reilly, 74 N. Y. 509, the civil damages act of 1873 was upheld as constitutional in spite of its "sweeping character;" and Andrews, J., said:—"We come back to the proposition that no law can be pronounced invalid for the reason simply that it violates our notions of

In some European countries an innocent man who is punished for crime through judicial errors may have reparation therefor from the state, but not in this country. This seems to be a penalty which one has to pay for belonging to civilized society.[7]

§ 766. The state not liable for officers' torts—No respondeat superior.—In respect to its contracts the state is equally liable with individuals;[8] and is restrained by the constitution from making laws to impair the obligation of its contracts.[9] But governments, federal or state, do not hold themselves liable to individuals for their officers' misfeasance, laches, or unauthorized exercise of power,[10] for such liability would involve them in endless embarrassments.[11] The state is not liable for the tortious acts of its agents except by force of statute.[12] A state acts in a sovereign capacity and does not submit its action to the judgment of courts and is not liable for torts or negligence of its agents, and a corporation created by the state as a mere agency of the state for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent acts of its servants to the same extent as the state itself, unless such liability is expressly provided by the statute creating such agency.[13]

justice, is oppressive and unfair in its operation, or because in the opinion of some or all of the citizens of the state, it is not justified by public necessity." See also, Mobile Co. v. Kimball, 102 U. S. 691, 704.

[7] This apparent injustice is considered in 26 Am. L. Rev. 555, and the N. Y. Law Jour. of Sept. 21, 1892.

[8] Danolds v. State, 89 N. Y. 36, 44; People v. Stephens, 71 N. Y. 527, 549.

[9] Dartmouth College v. Woodward, 4 Wheat. 518; Fletcher v. Peck, 6 Cranch 87, 137; New Jersey v. Wilson, 7 Cranch 164.

[10] Gibbons v. United States, 8 Wall. 269.

[11] Story Agency, § 319. In United States v. Kirkpatrick, 9 Wheat. 720, 735, Story, J., said:—"The general principle is that laches is not imputable to the government; and this maxim is founded not in the notion of extraordinary prerogative, but upon a great public policy. The government can transact its business only through its agents; and its fiscal operations are so various, and its agencies so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses, if the doctrine of laches can be applied to its transactions." See also, United States v. Vanzandt, 11 Wheat. 186; United States v. Nicholl, 12 Wheat. 505; People v. Russell, 4 Wend. (N. Y.) 570; Seymour v. Van Slyck, 8 Wend. (N. Y.) 403; overruling People v. Jansen, 7 Johns. (N. Y.) 332.

[12] Lewis v. State, 96 N. Y. 71; Clodfelter v. State, 86 N. C. 51, where the court said:—"That the doctrine of respondeat superior applicable to the relation of principal and agent does not prevail against the sovereign in the necessary employment of public agents is too well settled upon authority and practice to admit of controversy."

[13] Kinnare v. City of Chicago, 171

§ 767. Suits against United States—Court of claims.—The United States has not generally consented to be sued in the federal court of claims in cases sounding in tort or for war claims,[14] and is not liable for the tort of its officers in forcibly taking private land for public use.[15] That court is prohibited from exercising jurisdiction in congressional cases[16] if the claim be for destruction of or damage to property by the army, or if it be barred by the acts of 1873 or 1879.[17] When congress by special legislation refers a claim of which the court has not jurisdiction it must be held that the first purpose of congress is to confer jurisdiction, and, also, that the court is to render substantial justice if upon ordinary principles of law the claimant is entitled to it;[18] but where a private act of congress submits the question whether the government is liable for certain alleged acts of its officers, the liability must be deemed to be the legal liability which an ordinary body corporate, such as a municipal corporation, would be subject to for similar acts of its agents.[19] That congress has by several special acts provided for payment of several claims on which claimants could not have recovered in the court of claims in the exercise of its general jurisdiction is no reason why the United States should be held liable in that court on a like claim which congress has not provided for.[20] A statute authorizing the court of claims to render judgment on claims for property taken in 1857 for the United States by Colonel Johnson, while in command of the Utah expedition, was held not to authorize that court to give judgment for losses caused by the refusal of the colonel to permit claimants' trains to proceed without delay.[21] Though the United States be not responsible for the trespass of officers who illegally seize the property of a

Ill. 332; s. c. 49 N. E. 536; Town of Waltham v. Kemper, 55 Ill. 346; Elmore v. Drainage Com'rs, 135 Ill. 269; s. c. 25 N. E. 1010; Symonds v. Clay Co., 71 Ill. 355; Town of Odell v. Schroeder, 58 Ill. 353; Wilcox v. City of Chicago, 107 Ill. 334; Nagle v. Wakey, 161 Ill. 387; s. c. 43 N. E. 1079.

[14] Act of 1887, 24 U. S. Stat. at Large, ch. 359. In United States v. Lee, 106 U. S. 196, 205; s. c. 1 S. Ct. 240, Miller, J., says:—"Congress has created a court in which it has authorized suits to be brought against the United States, but has limited such suits to those arising on contracts, with a few unimportant exceptions."

[15] Langford v. United States, 101 U. S. 341. See United States v. Great Falls Mfg. Co., 112 U. S. 645; s. c. 5 S. Ct. 306.

[16] Act of March 3, 1883.

[17] Burke v. United States, 21 Ct. Cl. 317; Myers v. United States, 22 Ct. Cl. 80; Nelson v. United States, 22 Ct. Cl. 159. See Beasley v. United States, 21 Ct. Cl. 225.

[18] Cumming v. United States, 22 Ct. Cl. 344.

[19] Cumming v. United States, 22 Ct. Cl. 344.

[20] United States v. McDougall, 121 U. S. 89; s. c. 7 S. Ct. 850.

[21] United States v. Irwin, 127 U. S. 125; s. c. 8 S. Ct. 1033.

citizen, yet if the proceeds pass into the treasury the government will be liable on implied contract to account to the owner therefor, and the court of claims will have jurisdiction.[22] In congressional cases the claimant in the court of claims must prove his loyalty, and it is not always clear whether it is the personal representative, or the heir, or the creditor of a deceased whose loyalty must be proved.[23] A claim must be dismissed if the claimant "sustained the late rebellion."[24]

§ 768. **Suits against New York—Board of claims.**—In New York a board of claims has been established to hear and determine "all private claims against the state of New York";[25] and the state may become liable for an authorized trespass by its agents and officers on private lands;[26] but under the statute establishing the board of claims and the statute of 1876 creating the board of audit,[27] the state is not generally liable for the negligence or misfeasance of its agents, because the state has not by its legislature assumed such a liability.[28] In North Carolina, too, it is held that the state is not rendered liable for the torts of its officers while administering the functions of government by the constitutional provision which confers jurisdiction on the state supreme court "to hear claims against the state."[29] A similar rule prevails in Alabama.[30]

[22] Thayer v. United States, 20 Ct. Cl. 137.

[23] Compare Newman v. United States, 21 Ct. Cl. 205, with Randolph v. United States, 21 Ct. Cl. 282.

[24] Hart v. United States, 118 U. S. 62; s. c. 6 S. Ct. 961.

[25] Laws 1884, ch. 85, § 1; Laws 1883, ch. 205; Laws 1888, ch. 435.

[26] Coleman v. State, 47 N. Y. St. 609, where on appeal from the board of claims it was decided by the court of appeals that "for the injury caused by entering upon this strip of land by the state it was liable and the board erred in refusing the claimant any relief. The entry of the state upon the land and its direction to the contractor to excavate and remove the stone therefrom being wrongful, a trespass, it became liable for all trespasses committed by the contractor with the knowledge and acquiescence of the agents of the state in executing the contract."

[27] Laws 1876, ch. 444.

[28] Lewis v. State, 96 N. Y. 71, where, a prisoner in the state reformatory having been injured by a defective ladle which the overseer compelled him to use, Danforth, J., said:—"The claimant must fail unless the doctrine of respondeat superior can be applied to the state and the state made liable for the negligence or misfeasance of its agents in like manner as a natural person is responsible for the acts of his servants. We are aware of no principle of law or of any adjudged case which makes that application except where the state by its legislature has voluntarily assumed it."

[29] Clodfelter v. State, 86 N. C. 51.

[30] State v. Hill, 54 Ala. 67, where it was held that § 2534 of the revised code was only intended to afford to persons who had claims against the state a mode of ascertaining whether or not they were well founded, and if they were what

§ 769. Counties, etc., as divisions of the state.—Counties, towns, and, in some states, cities, in the exercise of the governmental functions delegated to them by the state, are not liable for the misfeasance or negligence of their officers; thus a county is not liable for the negligence of commissioners in selecting an incompetent physician for the care of the poor.[31] In Alabama a county, being deemed an agency of the state, and as exercising a quasi-legislative authority over highways, is not liable at common law in damages for any negligence in respect to them,[32] but such liability must be specially defined by statute.[33] In Virginia a county as a political subdivision of the state is not subject to suit, except as permitted by statute, and such permission may be withdrawn at the pleasure of the legislature;[34] and the same rule exists in Georgia, though the code makes every county a corporation with the right to sue and be sued. In a particular case, however, the code provides that a county may be sued for neglect to

sum was due to them; but not to create a liability on the part of the state where it did not exist already under the laws.

[31] In Summers v. Board &c., 103 Ind. 262; s. c. 2 N. E. 725; 53 Am. R. 512, the court said:—"There is no more reason for holding counties liable for the negligence of the commissioners in the exercise of the governmental functions delegated to them than there is for holding cities liable for the acts of their firemen or police officers, or for holding counties and townships liable for the torts of sheriffs and constables. In providing for the care of the poor, a police power which resides primarily in the sovereignty is exercised, and neither the sovereign nor the local governing body to whom such a power is delegated is responsible for the misfeasance of its officers." See also, City of Lafayette v. Timberlake, 88 Ind. 330; Faulkner v. City of Aurora, 85 Ind. 130; Robinson v. City of Evansville, 87 Ind. 334; Brinkmeyer v. City of Evansville, 29 Ind. 187. And in Bryant v. City of St. Paul, 33 Minn. 289; s. c. 23 N. E. 220; 53 Am. R. 31; 21 Cent. L. J. 33, it was held that the city was not liable for the misfeasance of the board of health selected by the city.

[32] Askew v. Hale Co., 54 Ala. 639; Mitchell v. Tallapoosa Co., 30 Ala. 130; Van Eppes v. Board &c., 25 Ala. 460.

[33] Barbour Co. v. Horn, 48 Ala. 649. Under the Alabama Code (§ 1203) an action lies against a county to recover damages sustained from the fall of a bridge, after the expiration of the period covered by the builder's guaranty, though no toll was charged: Barbour Co. v. Brunson, 36 Ala. 362.

[34] Fry v. Albemarle Co., 86 Va. 195; s. c. 9 S. E. 1004; Hunsaker v. Borden, 5 Cal. 288; Sharp v. Contra Costa Co., 34 Cal. 284. Plaintiff, the employe of an independent contractor, engaged in building a bridge on a county road, was injured by the negligent explosion of a charge of dynamite by the agents of defendant county while blasting and building an approach to the bridge. It was held, in an action for damages, that counties are not liable for the torts of their officers acting within the line of their authority, unless made so by statute: Smith v. Board &c., 46 Fed. 340.

keep bridges in repair, where the required bond is not taken from the bridge contractor.[35] In Connecticut counties have no organization and can not be sued.[36] The doctrine of respondeat superior is not applicable to counties, because there is no relation of master and servant between them and their officers, whose office and duties are created by the legislature.[37]

§ 770. **The same subject continued.**—In Illinois a county is not liable, in damages, for loss of life caused by not keeping a bridge in repair,[38] or for personal injury caused by the negligent construction of a court-house.[39] In Iowa it is held that no claim is a "just claim" against a county, within the meaning of the code provision, unless the law somewhere either requires or authorizes its payment by the county.[40] In Iowa a county is under the same obligation of reasonable

[35] Scales v. Ordinary &c., 41 Ga. 225.

[36] Ward v. Hartford Co., 12 Conn. 404.

[37] Fry v. Albemarle Co., 86 Va. 195; s. c. 9 S. E. 1004, where the court said:—"No suit can be maintained against the county upon the principles of respondeat superior because the relation of master and servant did not exist; such officers are quasi-public officers of the state. For although the officer in charge was appointed by the county, yet the office and duties incident to it were created by an act of the legislature for the general public welfare, the public roads of Albemarle county being highways of the commonwealth for the common benefit of all the people of the state." See the application of respondeat superior to municipal corporations in Maxmilian v. Mayor &c., 62 N. Y. 160.

[38] White v. Bond Co., 58 Ill. 297. See also, Town of Waltham v. Kemper, 55 Ill. 346; Russell v. Town of Steuben, 57 Ill. 35; Hedges v. Madison Co., 1 Gilm. (Ill.) 567; overruling Town of South Ottawa v. Foster, 20 Ill. 296.

[39] Hollenbeck v. Winnebago Co., 95 Ill. 148, 151, where the court said:—"No reason is perceived why a county should be held to respond in damages for the negligence of its officers while acting in the discharge of public corporate duties enjoined upon them by the laws of the state. Counties are but local subdivisions of the state clothed with but few corporate powers and these not of a private character. . . . In fact the powers and duties of counties bear such a due analogy to the governmental functions of the state, that as well might the state be held responsible for the negligent acts of its officers as counties. But it is said that the alleged negligence was affirmative in character, imputed to the county itself. The authorities, however, do not seem to make a distinction between the negligence of a town or county in failing to observe a duty and the performance of that duty in a negligent manner."

[40] Turner v. Woodbury Co., 57 Iowa 440; s. c. 10 N. W. 827; Foster v. Clinton Co., 51 Iowa 541; s. c. 2 N. W. 207. A county is not liable in damages for personal injury caused by the defective construction of its court-house, or the failure properly to light it at night: Kincaid v. Hardin Co., 53 Iowa 430; s. c. 5 N. W. 589. But a county is liable for a defective county bridge, because in

care and diligence to keep its bridges safe as a municipal corporation is to keep its streets safe.[41] In Missouri a county created by the legislature for purposes of public policy is not responsible for the neglect of prescribed duties, unless made so by statute.[42]

§ 771. **Non-liability of New England towns.**—New England towns, as involuntary political divisions of the state established for purposes of government, have the same exemption as counties, and are not liable to individuals for neglect of the public duties enjoined upon them, unless made subject to action by statute.[43] It is to be ob-

respect to it a special authority is conferred at the county's request: Kincaid v. Hardin Co., 53 Iowa 430; s. c. 5 N. W. 589; Wilson v. Jefferson Co., 13 Iowa 181; Huston v. Iowa Co., 43 Iowa 456.

[41] Weirs v. Jones Co., 80 Iowa 351; s. c. 45 N. W. 883, where the rule was applied to barricading dangerous places. Compare Soper v. Henry Co., 26 Iowa 264, 269, with Cook v. City of Anamosa, 66 Iowa 427; s. c. 23 N. W. 907; Koester v. City of Ottumwa, 34 Iowa 41; Klatt v. City of Milwaukee, 53 Wis. 196, 200; s. c. 10 N. W. 162.

[42] Reardon v. St. Louis Co., 36 Mo. 555; Ray Co. v. Bentley, 49 Mo. 236.

[43] Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332. In the leading case of Eastman v. Meredith, 36 N. H. 284; s. c. 72 Am. D. 302, the town-house was so imperfectly constructed that the flooring gave way at the annual town meeting, but it was held that a voter injured thereby could not recover damages against the town because, as Perley, C. J., said, "Towns are involuntary territorial and political divisions of the state, like counties, established for purposes of government and municipal regulation. It is chiefly through this organization of towns that the people exercise the sovereign power of government; and the plaintiff's claim is for damages which he has suffered from neglect of the town to provide him a safe place for the exercise of his public rights as a citizen of the town and state. . . . There is a great weight of authority to show that towns in New England are not liable to a civil action in a case like this. In Riddle v. Proprietors &c., 7 Mass. 169, 187, the case of Russell v. Men of Devon, 2 T. R. 667, is cited as an authority applicable to towns and counties in Massachusetts; and in Mower v. Inhabitants &c., 9 Mass. 250, it was held that towns are not liable to a civil action for neglect to perform public duties imposed on them, unless the action were given by some statute, and Russell v. Men of Devon was again recognized as applicable to the case of towns. President &c. v. Cook, 4 Pick. (Mass.) 405; Tisdale v. Inhabitants &c., 8 Met. (Mass.) 388; Holman v. Inhabitants &c., 13 Met. (Mass.) 297; and Brady v. City of Lowell, 3 Cush. (Mass.) 124, are to the same point. In Adams v. President &c., 1 Greenl. (Maine) 361, Mellen, C. J., cites from Riddle v. Proprietors &c., supra, the remarks of Parsons, C. J., on this subject, and adds: 'No private action, unless given by statute, lies against quasi-corporations for breach of a corporate duty.' And other cases in Maine would seem to show that the rule as above stated is well established in that state: Hooper v. Emery, 14 Maine 375, 377; Reed v. Inhabitants &c., 20 Maine 246, 248; Sanford v. Inhabitants &c., 32 Maine

served, however, that from a very early period Massachusetts towns have been made liable by statute for defects in their highways and bridges.[44]

§ 772. **Liability of New York towns.**—In New York, prior to 1881, in distinction from chartered cities and villages, no corporate duty rested upon towns, either at common law or by statute, in respect to the care or regulation of highways, and there was therefore no liability upon towns to respond in damages for neglect to keep highways in repair.[45] By the act of 1881 the liability of towns was

536. We understand the same rule to prevail in Vermont. In Baxter v. Winoonski Tpk. Co., 22 Vt. 114, Bennet, J., in delivering the opinion of the court, says, 'I take it to be well settled that if the statute had not given the action, no individual who had sustained a special damage through neglect of the town to repair their roads could maintain a suit. It may be said that where an individual sustains an injury by the neglect or default of another, the law gives a remedy; but that principle does not apply where the public are concerned.' And the same general doctrine is affirmed in Hyde v. Town of Jamaica, 27 Vt. 443. In Connecticut it is held that no action will lie for injuries caused by defects in a highway, unless given by statute: Chidsey v. Town of Canton, 17 Conn. 475. In Farnum v. Town of Concord, 2 N. H. 392, Richardson, C. J., says: 'No action lies at common law against towns for damages sustained through defects in highways.' He cites, as authorities for his position, Mower v. Inhabitants &c., 9 Mass. 250, and Russell v. Men of Devon, 2 T. R. 667; and after quoting the provision of our statute which gives an action for special damages caused by insufficiency of highways, he adds: 'And the question is, whether any damage has happened to the plaintiff in this case by means of the insufficiency or want of repairs of the highway in question, within the intent and meaning of this statute.' The right to recover against the town is thus placed entirely on the statute. There is certainly no such exact resemblance between counties in England and our towns as will make all the reasons upon which the court in Russell v. Men of Devon placed their decision applicable to towns in this state. Counties in England are, however, territorial and political divisions of the country, as counties and towns are here; and they are quasi-corporations so far as to be liable to public prosecution for neglect to perform their public duties. . . . And the doctrine of that case has been adopted and applied to towns in numerous instances by judges who must certainly be reckoned among the most eminent jurists that New England has produced: by Parsons and Shaw in Massachusetts, by Mellen and Shepley in Maine, and by our own learned Chief Justice Richardson in this state; and no men in the country have been more familiarly acquainted with the whole legal history of towns in New England, and all the traditions of the law in relation to them."

[44] Mass. Colonial Stats. (1648); Gen. Stats., ch. 44, §§ 1, 22. See Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332.

[45] Monk v. Town of New Utrecht, 104 N. Y. 552; s. c. 11 N. E. 268; People v. Board &c., 74 N. Y. 310.

made coextensive with that of highway commissioners of towns, and the liability of these officers is only a limited responsibility—arising out of their negligence and to the extent that they are possessed of or have the power to obtain means to make necessary repairs.[46] While under the act of 1881 the duty of repair still rests on the highway commissioners, the civil liability for injury resulting from the neglect of that duty is transferred to the town.[47] And that statute is not unconstitutional because it makes a town liable for the neglect of its highway commissioners.[48]

§ 773. **Liability of towns, etc., as to special duties.**—This rule of exemption from liability applies to counties and towns only when acting in their public character and in respect to their public and involuntary duties in distinction from their special and voluntary duties.[49]

[46] Clapper v. Town of Waterford, 131 N. Y. 382; s. c. 30 N. E. 240. In Monk v. Town of New Utrecht, 104 N. Y. 552; s. c. 11 N. E. 268, Ruger, C. J., said:—"Neither at common law nor by the statute were towns under any legal liability to respond in damages even to persons injured by defects in the highways, until after the enactment of ch. 700 of the laws of 1881. . . . By this act of 1881 it was provided that towns should thereafter be liable for such injuries in cases where the commissioners of highways of said towns are now by law liable therefor. It is seen that the liability of the towns is thus made co-extensive with that of commissioners of highways in towns. No absolute liability for such injuries was ever imposed by law upon such officers, but only a limited responsibility arising out of their negligence to the extent only that they were possessed of or had power to obtain means to make necessary repairs: Hines v. City of Lockport, 50 N. Y. 236; Hover v. Barkhoof, 44 N. Y. 113."

[47] Bryant v. Town of Randolph, 133 N. Y. 70; s. c. 30 N. E. 657.

[48] Taylor v. Town of Constable, 15 N. Y. S. 795; s. c. 131 N. Y. 597; 30 N. E. 63.

[49] Thus in Hannon v. St. Louis Co., 62 Mo. 313, where the county made a contract for laying water pipe to the county asylum, the work being done under the supervision of the county engineer, and while a trench was being dug it caved in and killed one of the workmen, it was held that the duty in which the county was engaged was not one imposed by general law on all counties, but a self-imposed one; that quoad hoc the county was a private corporation engaged in a private enterprise, and governed by the same rules as to its liability. And Metcalf, J., in Bigelow v. Inhabitants &c., 14 Gray (Mass.) 541, speaking of the rule established in Mower v. Inhabitants &c., 9 Mass. 247, that a private action can not be maintained against a quasi-corporation for neglect of corporate duty unless the action be given by the statute, adds:—"This rule of law, however, is of limited application. It is implied in the case of towns only to the neglect or omission of a town to perform those duties which are imposed on all towns without their corporate assent, and not to the neglect of those obligations which a town incurs when a special duty is imposed on it with its consent express or implied, or a

The distinction has been often observed between the liability of towns and cities for neglect to perform public duties growing out of the powers which they exercise under the general law, and this liability when the duty arises from some special power conferred on a particular town or city;[50] in the exercise of these special powers a city is a corporate legal individual and liable for injuries to third persons resulting from the neglect of corporate officers and agents.[51] In Kentucky a county, being held to be a corporation as well as a political division of the state, may be sued for the infringement of a patent;[52] but a county is not liable where the county authorities are not privy to the infringement.[53]

§ 774. Non-liability of school districts and drainage districts.— The management of the public schools is a branch of the state government, and school districts, as part of the state educational system, are

special authority is conferred on it at its request. In the latter case a town is subject to the same liabilities for the neglect of those special duties to which private corporations would be if the same duties were imposed or the same authority conferred on them, including their liability for the wrongful neglect as well as the wrongful acts of their officers and agents." A township is not liable for torts committed by its officers for filling up a ditch without proper authority: Chase v. Middleton, 123 Mich. 647; s. c. 82 N. W. 612.

[50] Mayor &c. v. Furze, 3 Hill (N. Y.) 612; Bailey v. Mayor &c., 3 Hill (N. Y.) 531.

[51] Lloyd v. Mayor &c., 5 N. Y. 369.

[52] May v. Logan Co., 30 Fed. 250; May v. Mercer Co., 30 Fed. 246. In the latter case Barr, J., said:— "There are many cases which hold that counties can not be sued at all,—this will of course depend upon the nature and character of the subdivisions called counties, in the respective states,—and some that they can not be sued for torts; but assuming that a county is a corporation and may sue and be sued for its contracts made within the scope of the authority given them, there is only one case known to me which holds that a county is not liable for the infringement of a patent right by its use, and that is Jacobs v. Hamilton Co., 1 Bond 500. . . . This case has, however, not been followed." A city is liable in its corporate capacity for the infringement of a patent (Munson v. Mayor &c., 3 Fed. 338), though it was by the separately incorporated fire department (Brickill v. Mayor &c., 7 Fed. 479), on the ground that any gains from such infringement must be in the general treasury of the city.

[53] A contract for building a county jail provided for a patent lock device, which was put in by the contractor without authority from the owner of the patent. In less than two years after the county took possession of the jail the patent expired, and in the meantime the lock device was not used. The county authorities knew nothing of the contractor having put in the lock without authority from the patentee. It was held that the county was not liable in tort for infringement of the patent: May v. Juneau Co., 30 Fed. 241.

on the same footing as counties and towns in respect to liability to individuals for the breach of official duty by their officers.[54] In Ohio it has been held that a corporate board of education is not liable to a pupil at a common school injured through the board's negligence.[55] In Illinois a drainage district formed under the statute of 1879 is not a private but a public corporation, and is not liable for the negligent or tortious acts of its commissioners.[56]

§ 775. **Non-liability for separate boards and bodies.**—A city is not liable for the torts or negligence of a board of health in the discharge of its duties, where such board is constituted a separate body by the city charter, and it is not material whether its members are appointed directly by the state or by the city government in pursuance of the charter.[57] The board of revision and correction of assessments in

[54] Bank v. Brainerd School Dist., 49 Minn. 106; s. c. 51 N. W. 814, where the court said:—"The board of education is a corporation which holds and manages the property in its control as trustee for the district for a public purpose. It is made its duty to keep and take care of the property of the district, but this is a duty it owes to the district and not to individuals, and is a duty imposed for the public benefit, with no consideration or emolument to the corporation; and it is given a corporate existence solely for the exercise of this public function. It is organized for educational purposes, not for the benefit or protection of property or business interests." See also, Board v. Moore, 17 Minn. 412. Nor is a right of action against a school district for such negligence given by § 117, ch. 36, general statutes of 1878, which authorizes actions to be brought against trustees in their official capacity for an injury to the rights of plaintiff arising from some act or omission of the officers or of the district: Bank v. Brainerd School Dist., supra.

[55] Finch v. Board of Education, 30 Ohio St. 37, where it was said:—"Whether we consider the language of the statutes affecting this question of defendant's liability, applying to them the rules of construction indicated by the very narrow range of objects and purposes in the organization of defendant as a corporation, or looking to the general policy of our state common-school system, we are of opinion no action sounding in tort was ever contemplated." And in Bigelow v. Inhabitants &c., 14 Gray (Mass.) 541, it was held that a "town which has assumed the duties of school districts is not liable for an injury sustained by a scholar attending the public school from a dangerous excavation in the school yard owing to the negligence of the town officers."

[56] Elmore v. Drainage Com'rs, 135 Ill. 269; s. c. 25 N. E. 1010, where the court said:—"The non-liability of the public quasi-corporation, unless liability is expressly declared, is usually placed on these grounds: that the corporators are made such nolens volens; that their powers are limited and specific, and that no corporate funds are provided which can without express provision of law be appropriated to private indemnification."

[57] Bryant v. City of St. Paul, 33 Minn. 289; s. c. 23 N. W. 220, where the court said:—"The duty is im-

New York city being independent public officers acting not for the peculiar benefit of the city, but for the public good, the city is not liable for their negligent discharge of duty;[58] and the city is similarly exempt as to the negligence of its commissioners of public instruction,[59] and as to the negligence of its commissioners of charities and correction.[60]

§ 776. **Non-liability for torts of independent officers.**—A municipal corporation is not liable for the torts or negligence of an officer whom it is required by law to appoint for the performance of a public duty laid upon the officer, and from which it derives no special benefit.[61] A village is not liable for the negligence of its trustees and commissioners if under the village charter they are independent public officers.[62]

posed by the legislature upon the board of health, under the police power, to be exercised for the benefit of the public generally. It is one in which the city corporation has no particular interest, and from which it derives no special benefit in its corporate capacity. And we think it clear that, as respects an agency thus created for the public service, the city should not be held liable for the manner in which such service is performed by the board. . . . The duties of such officers are not of that class of municipal or corporate duties with which the corporation is charged in consideration of charter privileges, but are police or governmental functions, which could be discharged equally well through agents appointed by the state, though usually associated with and appointed by the municipal body." See also, New York &c. Co. v. Brooklyn, 71 N. Y. 580; Jones v. Mayor &c., 9 N. Y. St. 247.

[58] Tone v. Mayor &c., 70 N. Y. 157; followed in Heiser v. Mayor &c., 104 N. Y. 68; s. c. 9 N. E. 866.

[59] Ham v. Mayor &c., 70 N. Y. 459.

[60] Where, as in New York, the state courts hold that a city is not liable for injuries arising from the negligence of the employes of a municipal board, a libel against a steamboat owned by the city and negligently responsible for a collision must be dismissed without costs: Haight v. New York, 24 Fed. 93.

[61] New York &c. Co. v. Brooklyn, 71 N. Y. 580, where both the dock commissioners and common council were to be regarded as agents of the state, not of the city, and therefore the city not liable for their torts or omissions. - - - The duties imposed on the commissioners of public charities and corrections for the city of New York by the statutes of 1860 and 1870 are public in their character and from them no special benefit to the city is derived; and such officers, though appointed by the city, are not its agents or servants; and therefore the city was held not liable where the commissioners' employe caused death by the negligent driving of an ambulance belonging to the city: Maxmilian v. Mayor &c., 62 N. Y. 160. Where the driver of a city wagon employed by the board of public works to cart refuse and ashes to a public dumping place by his negligence killed a man while making a dump, it was held that the city was not liable: Condict v. Mayor &c., 46 N. J. L. 157. See also, Wallace v. City of Menasha, 48 Wis. 79, 85; s. c. 4 N. W. 101; Hayes v. City of Oshkosh, 33 Wis. 314.

[62] Where the charter of a village

§ 777. The same subject continued—Who are independent officers.—It has been held upon high authority that whether an officer or board existing under a municipal charter is to be deemed independent or not does not much depend upon the means by which such officers are placed in their position,—whether they are elected by the people of the municipality or appointed by the governor of the state or the president of the United States, as the people are the recognized source of all authority, state and municipal; it rather depends upon the nature of the powers conferred upon these officers and boards.[63] A

makes it a highway district of a neighboring town, and provides that the highway taxes shall be paid to the treasurer to be expended in maintaining the streets, which shall be under the charge of a commissioner appointed by the trustees, such trustees and commissioner are not the agents of the village in the premises, but are public officers, and the village is not liable for their negligence: Bates v. Village of Rutland, 62 Vt. 178; s. c. 20 Atl. 278, where the court said:—"The defendant was engaged in the public work of repairing its streets. The officers by whom the work was being performed were for this purpose public officers, and for their negligent acts an action does not lie against the defendant." See also, Wilkins v. Village of Rutland, 61 Vt. 336; s. c. 17 Atl. 735; Walsh v. Village of Rutland, 56 Vt. 228; Weller v. City of Burlington, 60 Vt. 28; s. c. 12 Atl. 215. Where the trustees of a New York village are made by its charter highway commissioners they are to be regarded, in respect to that function, not as independent officers but as corporate agents, so as to make the village civilly responsible for their acts or omissions according to the law of master and servant: Conrad v. Trustees &c., 16 N. Y. 158.

[63] The act of congress of 1871 (16 U. S. Stat. at Large 419) created a municipal corporation called the District of Columbia; it provided for the appointment of a governor and for a legislative assembly for the district; it created a board of public works to consist of the governor and four others to be appointed by the president by and with the consent of the senate; such board to have entire control of the streets, and to disburse all moneys therefor, and to make reports to the legislative assembly of the district and to the governor, who was directed to lay the same before the president to be by him transmitted to congress. It was held in Barnes v. District of Columbia, 91 U. S. 540, that the board of public works was not an independent body acting for itself but a part of the corporation, and that the district was responsible to an individual injured through the defective condition of the streets of Washington. Hunt, J., speaking for the majority of the court, said:—"We have already endeavored to show that it is quite immaterial, on the question whether this board is a municipal agency, from what source the power comes to those officers, whether by appointment of the president or by the legislative assembly, or by election. This board is invested with the entire control and regulation of the repair of the streets and all other works which may be intrusted to their charge by the legislative assembly or congress. It is to be noticed here that the municipal corporation as represented by the legislative assembly may impose upon

state officer must derive his powers from and execute them in obedience to a state law.[64]

§ 778. **The same subject continued—Applied in New York city, etc.**—The park commissioners of New York city are not independent public officers, but act for the city, and the city is liable for their negligence within the rule as to municipal liability for an officer's neglect;[65] and this is also true of the street-cleaning commissioners

this board such other duties as they think proper. . . . The board is required to make a report of their transactions during the preceding year to each branch of the legislative assembly and also to the president to be placed before congress by him. This duty is also an indication of their subordination equally to congress and to the legislative assembly. The powers given to this board are not of a character belonging to independent officers, but rather those which indicate that it is the representative of the municipal corporation. . . . In the case before us we think that congress intended to make the board a portion of the municipal corporation. . . . Names are not things. Perhaps there is no restriction on the power of congress to create a state within the limits of the District of Columbia; but it does not make an organization a state to call its mayor a governor, or its common council a legislative assembly, or its superintendent of streets a board of public works, especially when the statute by which they are created opens with a declaration of its intention to create a municipal corporation. We take the body thus organized to be a municipal corporation and that its parts are composed of the members referred to; and we hold, therefore, that the proceedings by that body, in the repair and improvement of the street out of which the accident arose, are the proceedings of the municipal corporation." In the foregoing decision, Bailey v. Mayor &c., 3 Hill (N. Y.) 531; s. c. affirmed 2 Denio (N. Y.) 433, was relied on as a leading authority. But see Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332.

[64] State v. Vallei, 41 Mo. 29.

[65] Ehrgott v. Mayor &c., 96 N. Y. 264, where Earl, J., said:—"To determine whether there is municipal responsibility the inquiry must be whether the department whose misfeasance or nonfeasance is complained of is a part of the machinery for carrying on the municipal government, and whether it was at the time engaged in the discharge of a duty, or charged with a duty primarily resting upon the municipality. For these views the cases of Bailey v. Mayor &c., 3 Hill (N. Y.) 531, 538; s. c. affirmed 2 Denio (N. Y.) 433, and Barnes v. District of Columbia, 91 U. S. 540, are ample authority; and the case of Richards v. Mayor &c., 16 J. & Sp. (N. Y.) 315, is a precise authority." Detroit park commissioners selected by the legislature are not city officers: People v. Common Council &c., 28 Mich. 228. When park commissioners are agents of the city the city is liable for their acts: Mahon v. Mayor &c., 31 N. Y. S. 676; s. c. 10 Misc. (N. Y.) 664. Where the statutes of Massachusetts gave a remedy for damages for the acts of park commissioners in diverting surface water, and there was no evidence that they had exceeded their authority, it was held that an action of tort would not be sustained, but the remedy if any was under the statute: Holleran v.

under the city-consolidation act of 1882 in the performance of the duty of removing refuse from the streets,[66] and probably also as to the aqueduct commissioners appointed under the act of 1883 for supplying the city of New York with additional water.[67]

§ 779. **Liability of municipal corporations in tort—General principles.**—It may be well in this connection to state as briefly and as concisely as possible, a few of the fundamental principles relating to the functions and duties of municipal corporations, in order more clearly to understand and more readily apply the principles of laws relating to the subject-matter of torts. (a) As already seen the municipal corporation performs a two-fold function in the affairs of the state. In its nature it is dual. It is charged by the state with the performance of certain duties that are governmental and relate to the public health, general welfare, public peace, etc. These duties are sometimes designated in state legislation, and sometimes in municipal legislation enacted under powers delegated by the state. On the other hand the municipality, although chartered as an entity by the state, is invested with certain powers of local self-government, and concerning matters of purely local concern, in which the corporation alone is interested, and in this respect it partakes largely of the nature of a private corporation. In the performance of these functions it exercises legislative powers similar to the state, optional in their nature, and coextensive with municipal interests. It also, of necessity, is invested with the power of administration, not unlike the executive power of the state, and has certain limited judicial powers, chiefly, as a rule, relating to the violation of its ordinances. The scope of municipal powers, duties and corporate functions is regulated and defined in its charter. Being essentially a private corporation it is subject to the jurisdiction of the courts of the state, and its rights, powers and duties are therein interpreted the same as those of individuals or private corporations. (b) Whether a municipality will legislate or adopt an ordinance is wholly discretionary.

City of Boston, 176 Mass. 75; s. c. 57 N. E. 220. City not liable for acts of road commissioners in the construction of a drain: Bryant v. Inhabitants &c., 86 Maine 450; s. c. 29 Atl. 1109. Where an electric bureau derives large revenues from grants to private persons, which grants are regulated by ordinance, and the revenues are paid into the city treasury, the employes of such bureau are city employes and the city is liable for injury caused by the negligence of such employes in driving through the city streets: Bodge v. Philadelphia, 167 Pa. St. 492; s. c. 31 Atl. 728.

[66] Engle v. New York, 40 Fed. 51; Barney Dumping Boat Co. v. Mayor &c., 40 Fed. 50.

[67] People v. Civil Service Boards, 17 Abb. N. C. (N. Y.) 64.

(c) Where a municipal officer is charged with the performance of public duties he is, so far as those duties are concerned, a state officer. (d) The statute or charter may give to a municipal officer discretion in the performance of the duties of his office. (e) The statute or charter may make the performance of certain duties of a municipality mandatory and imperative. (f) The option to perform, the manner of performing, and the result of the performance of public duties create no liabilities. (g) The performance of purely municipal functions is administrative and the usual liability applying to such duties applies. (h) Some acts of a municipality are judicial in their nature and no liability ensues, as in the plan, size and material of a sewer. (i) Other acts are ministerial, to which liability attaches, as in the construction of a sewer.

§ 780. Liability in performance of public or governmental functions.—When power conferred has relation to public purposes and for the public good it is to be classified as governmental in its nature and appertains to the corporation in its political capacity. But when it relates to the accomplishment of private purposes in which the public is only indirectly concerned, it is private in its nature and the municipality in respect to its exercise is regarded as a legal individual. In the former case the corporation is exempt from all liability, whether for non-user or misuser; while in the latter case it may be held to that degree of responsibility which would attach to an ordinary corporation.[68]

[68] Springfield &c. Ins. Co. v. Village of Keeseville, 148 N. Y. 46; s. c. 42 N. E. 405. Where by statute it is made the duty of the commissioner of street cleaning to remove or dispose of ashes, garbage, etc., as often as the public health may require, the performance of such duty is a governmental function and the city it not liable for an injury caused by the driver in the street cleaning department: Davidson v. Mayor &c., 54 N. Y. S. 51; s. c. 24 Misc. (N. Y.) 560. But not so if it is a quasi-private duty: Quill v. Mayor &c., 55 N. Y. S. 889; s. c. 36 App. Div. (N. Y.) 476. A city is not liable for permitting its hydrants to become clogged since the neglect is in the performance of a public or governmental function: Miller v. City of Minneapolis, 75 Minn. 131; s. c. 77 N. W. 788. A city is not liable for a fire through negligence or inefficiency of its fire department: Irvine v. City of Chattanooga, 101 Tenn. 291; s. c. 47 S. W. 419. Nor in the performance of public duties generally: Bartlett v. Town of Clarksburg, 45 W. Va. 393; s. c. 31 S. E. 918; Snyder v. City of Lexington, 20 Ky. L. 1562; s. c. 49 S. W. 765. Where the charter imposes a duty on the board of health of keeping its streets free from filth the duty is governmental in its nature and not administrative, in which case the city is not liable for an act of negligence by one engaged in the performance of this duty: Love v. City of Atlanta, 95 Ga. 129;

§ 781. Duties which are mandatory and discretionary.—The legislature may confer powers and enjoin their performance as a duty; or it may create new powers to be exercised as governmental adjuncts and make their assumption optional with the corporation. Where a duty specifically enjoined upon the corporation as such has been wholly neglected by its agents and an injury to an individual arises in consequence of the neglect, the corporation will be responsible.[69] So when a ministerial duty is imposed by law a negligent omission to perform that duty creates a liability for damages.[70] But such liability will not attach to a corporation where it voluntarily assumes powers authorized by the legislature under a general provision respecting municipalities throughout the state and permissive in their nature.[71] As a part of the governmental machinery of the state, municipal corporations legislate and provide for the customary local convenience of the people, and in exercising these discretionary functions the corporations are not called upon to respond in damages to indi-

s. c. 22 S. E. 29. Where a person is convicted by a municipal court and sentenced to work on the streets, and while so engaged is killed through negligence of the foreman, an employe of the city, who, after the injury, fails to secure proper medical attention and treatment, the city is not liable: Nisbet v. City of Atlanta, 97 Ga. 650; s. c. 25 S. E. 173. The city is not liable for the failure of a private water company, with which it has a contract to supply water, to meet its obligations: Planters' Oil Mill v. Monroe Waterworks &c. Co., 52 La. An. 1243; s. c. 27 So. 684. Cf. City of New Orleans v. Kerr, 50 La. An. 413; s. c. 23 So. 384. But is liable for property destroyed on account of an insufficient water supply: Springfield &c. Ins. Co. v. Village of Keeseville, 29 N. Y. S. 1130; s. c. 80 Hun (N. Y.) 162. The power of a city to supply water is legislative in its nature and the city is not liable for loss occasioned by fires growing out of insufficient fire protection: Planters' Oil Mill v. Monroe Water-works &c. Co., 52 La. An. 1243; s. c. 27 So. 684. Cf. Yule v. City of New Orleans, 25 La. An. 394; Springfield &c. Ins. Co. v. Village of Keeseville, 148 N. Y. 46; s. c. 42 N. E. 405; Akin v. Akin, 78 Ga. 24; s. c. 1 S. E. 267; Heller v. Mayor &c., 53 Mo. 159; Wheeler v. City of Cincinnati, 19 Ohio St. 19; s. c. 2 Am. R. 368; Vanhorn v. City of Des Moines, 63 Iowa 447; s. c. 19 N. W. 293; Brinkmeyer v. City of Evansville, 29 Ind. 187; Grant v. City of Erie, 69 Pa. St. 420; s. c. 8 Am. R. 272; Mendel v. City of Wheeling, 28 W. Va. 233; Foster v. Lookout Water Co. &c., 3 Lea (Tenn.) 42; Tainter v. City of Worcester, 123 Mass. 311; Witheril v. Mosher, 9 Hun (N. Y.) 412. City not liable for failure to enforce ordinance: Moran v. Pullman &c. Co., 134 Mo. 641; s. c. 36 S. W. 659.

[69] Springfield &c. Ins. Co. v. Village of Keeseville, 148 N. Y. 46; s. c. 42 N. E. 405.

[70] Springfield &c. Ins. Co. v. Village of Keeseville, supra.

[71] Springfield &c. Ins. Co. v. Village of Keeseville, supra. Cf. Edgerly v. Concord, 62 N. H. 8; Tainter v. City of Worcester, 123 Mass. 311; Maxmilian v. Mayor &c., 62 N. Y. 160; Eastman v. Meredith, 36 N. H. 284; Hughes v. Monroe Co., 147 N. Y. 49; s. c. 41 N. E. 407.

viduals either for omissions to act or in the mode of exercising the powers conferred on them for public purposes and to be exercised at discretion for the public good. For injuries arising from the corporation's failure to exercise its public, legislative and police powers, and for the manner of exercising those powers, there is no remedy against the municipality, nor can an action be maintained for damages resulting from the failure of its officers properly and efficiently to discharge their official duties.[72]

§ 782. **Duties legislative or judicial.**—In general a municipality is not liable for negligence in the performance of any duty which is legislative or judicial, or for a failure to perform such duty, but is liable for neglect to perform a ministerial duty, or for negligence in the exercise of privileges granted.[73] Municipal corporations are not liable for the manner in which they exercise in good faith their discretionary powers of a public, or legislative, or quasi-judicial character. Official action is judicial when it is the result of judgment or discretion, and ministerial when it is absolute, certain and imperative, involving merely the execution of a set work, and when the laws which impose it prescribe the time, mode, and occasion of its performance with such certainty that nothing remains for judgment or discretion.[74] And so a corporation acts judicially, or exercises discretion, when it selects and adopts a plan in the making of public improvements such as the construction of sewers and drains, but as soon as it begins carrying out that plan, it acts ministerially, and is bound to see that the work is done in a reasonably safe and skilful manner.[75]

§ 783. **Liability for torts of public officers.**—In regard to the liability of the municipality for torts the general rule is that where the officers or department are in the performance of duties pertaining to the state or which are governmental the corporation is not liable; thus

[72] Edgerly v. Concord, 62 N. H. 8.

[73] Vaughtman v. Town of Waterloo, 14 Ind. App. 649; s. c. 43 N. E. 476.

[74] City of Chicago v. Seben, 165 Ill. 371, 378; s. c. 46 N. E. 244; People v. Bartels, 138 Ill. 322; s. c. 27 N. E. 1091.

[75] City of Chicago v. Seben, 165 Ill. 371; s. c. 46 N. E. 244; City of Springfield v. Le Claire, 49 Ill. 476, 478; Johnston v. District of Columbia, 118 U. S. 19; s. c. 6 S. Ct. 923; Seifert v. City of Brooklyn, 101 N. Y. 136; s. c. 4 N. E. 321. The city is not liable for a failure to pass an ordinance prohibiting the riding of bicycles on the sidewalk to a pedestrian injured by a bicycle: Tarbutton v. Town of Tennille, 110 Ga. 90; s. c. 35 S. E. 282. The improper and negligent exercise of police power does not render a city liable: Betham v. City of Philadelphia, 196 Pa. St. 302; s. c. 46 Atl. 448.

as to the departments of charity in charge of the poor, the criminal and insane, or the department of police, or the board of education.[76] On the other hand where the duties are essentially local, in which the municipality has a special interest as distinguished from the public at large, or where the corporation derives an emolument, profit or advantage, the corporation is liable; thus as to the street department, sewer department and fire-department.[77]

§ **784. Liability for torts of officers not public.**—Where a contract is let to grade a street to the official grade and by an error of a city officer the grade of a street was made eight feet above the official grade, by means of which extra grade damages ensue, the city is not liable. The rule is that when an officer has no other authority entrusted to him than that of the law and he acts beyond that authority and a tort ensues, and a citizen is injured in person or property, it is the act of the officer only and the city is not liable.[78] An act by municipal officers done outside of their actual and apparent scope of authority, does not render the city liable.[79] A board of education is not liable for an act of an officer done outside of the scope of his authority.[80] But where he acts under the direction of the city, or with

[76] Maxmilian v. Mayor &c., 62 N. Y. 160; Swift v. Mayor &c., 83 N. Y. 528, 535; Ham v. Mayor &c., 70 N. Y. 459.

[77] Ehrgott v. Mayor &c., 96 N. Y. 264, 271; Barney Dumping Boat Co. v. Mayor &c., 40 Fed. 50; Philadelphia &c. R. Co. v. Mayor &c., 38 Fed. 159; Barnes v. District of Columbia, 91 U. S. 540; New York &c. Co. v. City of Brooklyn, 71 N. Y. 580; Bieling v. City of Brooklyn, 120 N. Y. 98, 105; s. c. 24 N. E. 389. A board of education is not liable for misuser by an officer who is in performance of his duties under the compulsory education act: Reynolds v. Board of Education &c., 53 N. Y. S. 75; s. c. 33 App. Div. (N. Y.) 88.

[78] Sievers v. City &c. of San Francisco, 115 Cal. 648; s. c. 47 Pac. 687; Chambers v. Satterlee, 40 Cal. 497, 529; Goddard v. Inhabitants &c., 84 Maine 499; s. c. 24 Atl. 958; 30 Am. St. 373. (See this case for valuable collection of cases and analysis.) Cf. Huffman v. San Joaquin Co., 21 Cal. 426; Barnett v. Contra Costa Co., 67 Cal. 77; s. c. 7 Pac. 177; Lloyd v. Mayor &c., 5 N. Y. 364; Crowell v. Sonoma Co., 25 Cal. 313; Winbigler v. Mayor &c., 45 Cal. 36; Chope v. City of Eureka, 78 Cal. 588; s. c. 21 Pac. 364.

[79] Wabaska Elec. Co. v. City of Wymore, 60 Neb. 199; s. c. 82 N. W. 626. City is not liable for the malicious acts of an officer: Moss v. City Council &c., 93 Ga. 797; s. c. 20 S. E. 653. But it has been held that the city is liable for such acts if done within the scope of authority, whether the acts are ratified or not: City of Ysleta v. Babbitt, 8 Tex. Civ. App. 432; s. c. 28 S. W. 702. The law is well settled that a municipality is not liable for the tortious acts of its officers or agents, when they are ultra vires or beyond the scope of corporate authority in reference to the subject-matter: Boye v. City of Albert Lea, 74 Minn. 230; s. c. 76 N. W. 1131.

[80] Reynolds v. Board of Education

its sanction, the law is otherwise and the city liable,[81] and so where the act of the mayor in committing a trespass is ratified by the city, liability attaches,[82] or where it is done under the direction of the city council.[83] The statute may also change the rule and make the city liable.[84] A city is not liable for negligence of an assistant street superintendent not under the control of a city council, though elected by it.[85] The reason for this rule is in the fact where a city is in the exercise of its police power it is not liable for the acts of its officers in violation of the laws of the state and in excess of the legal powers of the city.[86] Where a city has power to change the grade of its streets only by ordinance, it is not liable for the acts of its agents in making a change in the grade without such ordinance.[87] Where a city made a contract for improving a street and deducted a certain price per yard for the use of its steam-roller, and the roller was used by the city employes without suggestions from the contractor and a fire was communicated by the roller, the city is liable;[88] and so in the operation of an acequia for irrigation purposes.[89]

§ 785. **Liability in making improvements, etc.**—If the city in making an improvement uses ordinary care and skill, so that when the work is completed it will be reasonably safe, the city will not be liable.[90] Where personal injuries are received as a result of negligence of the city in building a sewer for the use of which property-owners pay a rental to the city, it is liable therefor.[91] But the city is not liable for acts in maintenance of water-works which by statute is vested in an independent commission,[92] nor is it liable for a loss oc-

&c., 53 N. Y. S. 75; s. c. 33 App. Div. (N. Y.) 88.

[81] Johnson City v. Wolfe, 103 Tenn. 277; s. c. 52 S. W. 991.

[82] Commercial Elec. &c. Co. v. City of Tacoma, 20 Wash. 288; s. c. 55 Pac. 219.

[83] Hallman v. City of Platteville, 101 Wis. 94; s. c. 76 N. W. 1119.

[84] Parks v. Greenville, 44 S. C. 168; s. c. 21 S. E. 540.

[85] McCann v. City of Waltham, 163 Mass. 344; s. c. 40 N. E. 20. It was urged in a unique case that a policeman was a nuisance and the city therefore liable for his acts, but the contention was not sustained: Craig v. City of Charleston, 78 Ill. App. 312; s. c. affirmed 180 Ill. 154; 54 N. E. 184.

[86] Town of Odell v. Schroeder, 58 Ill. 353; City of Chicago v. Turner, 80 Ill. 419, 422; Wilcox v. City of Chicago, 107 Ill. 334; Blake v. City of Pontiac, 49 Ill. App. 543.

[87] Beatty v. City of St. Joseph, 57 Mo. App. 251.

[88] McMahon v. City of Dubuque, 107 Iowa 62; s. c. 77 N. W. 517.

[89] City of Ysleta v. Babbitt, 8 Tex. Civ. App. 432; s. c. 28 S. W. 702. As to when an officer is not an agent of the city, see Gilpatrick v. City of Biddeford, 86 Maine 534; s. c. 30 Atl. 99.

[90] McQueen v. City of Elkhart, 14 Ind. App. 671; s. c. 43 N. E. 460.

[91] Coan v. City of Marlborough, 164 Mass. 206; s. c. 41 N. E. 238.

[92] Gross v. City of Portsmouth, 68 N. H. 266; s. c. 33 Atl. 256.

casioned by fire growing out of the defective condition of its waterworks.[93] But where water-gates are maintained by a city for pecuniary gain it is immaterial by whom, or for what purpose, they were originally erected, in an action for damages.[94] In such case the maintenance or removal of the gates is not a governmental function.[95] A city hiring a train and crew and operating the same on a temporary track laid on its own property is liable to its employes as other corporations operating a railroad.[96] The liability of a city for injury growing out of ownership and operation of a gravel-bank which is dangerous, where no notice is given to laborers, is the same as that of a natural person.[97] The city is liable for injury to an employe by reason of mismanagement of a steam-roller engaged in repairing the streets.[98] Where a city is the owner of a toll-bridge over a river it is liable for injury resulting from defects in the approach to the bridge though in another state.[99] And it is liable for an injury growing out of negligence in not providing barriers or lights on a drawbridge.[100] Where a statute provides that it shall not be lawful to locate a pest-house within one mile of the boundary-line of the city and a person is injured by the acts of the municipal officers, the city is liable for their acts though the statute provides a remedy against the officers only.[101]

§ 786. Torts in diverting watercourses, surface-water, etc.— Where the city in grading its streets diverted the natural drainage of the surface-water and threw larger quantities of water, dirt and filth than formerly on plaintiff's ground and caused large quantities of water, dirt and filth to acumulate on the street in front of plaintiff's lot, to such an extent as to become a nuisance, it is unnecessary to allege that the work was negligently and unskilfully done.[102] Nor

[93] Springfield &c. Ins. Co. v. Village of Keeseville, 148 N. Y. 46; s. c. 42 N. E. 405.

[94] City Council &c. v. Lombard, 99 Ga. 282; s. c. 25 S. E. 772.

[95] City Council &c. v. Lombard, supra.

[96] Coughlan v. City of Cambridge, 166 Mass. 268; s. c. 44 N. E. 218. For negligent construction of doors of an engine house, see Kies v. City of Erie, 169 Pa. St. 598; s. c. 32 Atl. 621.

[97] City of Winfield v. Peeden, 8 Kan. App. 671; s. c. 57 Pac. 131.

[98] Barksdale v. City of Laurens, 58 S. C. 413; s. c. 36 S. E. 661. See Rev. Stats. S. C., § 1582.

[99] City Council &c. v. Hudson, 94 Ga. 135; s. c. 21 S. E. 289.

[100] Stephani v. City of Manitowoc, 89 Wis. 467; s. c. 62 N. W. 176.

[101] City of Henderson v. Clayton (Ky.), 57 S. W. 1.

[102] Guest v. Commissioners &c., 90 Md. 689; s. c. 45 Atl. 882. Cf. Seifert v. City of Brooklyn, 101 N. Y. 136; s. c. 4 N. E. 321; Byrnes v. City of Cohoes, 67 N. Y. 204; Noonan v. City of Albany, 79 N. Y. 470. 475; Field v. Inhabitants &c., 36 N. J. Eq. 118; O'Brien v. City of St.

in such case is it necessary to allege knowledge or notice on the part of the city, since, it being an original wrong-doer, it is not entitled to notice before suit.[103] A municipality is liable for damages caused by tearing away a gutter wall by which the water from the street was turned upon plaintiff's premises and building.[104] It has been held that damages are not recoverable for water caused to flow in a dooryard by reason of necessary changes in the surface and grade of a street, under the general statutes, section 2683, laws of Connecticut, although it might have been graded so as to prevent such flow.[105] The city may be liable for diverting a watercourse for supplying a reservoir.[106] In the grading of streets it is the duty of the city to take care of the surface-water accumulated by reason of the grading and prevent injury to property where it can be done practically and at a reasonable expense.[107] Where the city collects the water in a body and by artificial means throws it upon adjacent land it is liable.[108] And where by a permanent public improvement it narrows the channel of a natural waterway and throws the current on the opposite side so as to injure property then it is liable.[109] A citizen is liable in damages for negligence in diverting a stream by means of an artificial canal by means of which the canal overflowed and damaged plaintiff's land. Where the city is beneficially interested it is not a governmental function.[110] In a suit for polluting a stream with sewage, evidence of a town vote authorizing the construction of the sewers and making appropriation therefor is admissible, whether the town was or was not authorized to build sewers.[111]

§ 787. Respondeat superior not applicable to public officers.— Where the city assumes a duty public in its nature, such as the erection of a schoolhouse, and an injury results, it is not liable. It is performed in obedience to a statute which was enacted because it was

Paul, 25 Minn. 331; Ashley v. City of Port Huron, 35 Mich. 296; Patoka Tp. v. Hopkins, 131 Ind. 142; s. c. 30 N. E. 896; Pumpelly v. Green Bay &c. Co., 13 Wall. 136; Hitchins v. Mayor &c., 68 Md. 100, 113; s. c. 11 Atl. 826; Mayor &c. v. Merryman, 86 Md. 584, 592; s. c. 39 Atl. 98.

[103] Guest v. Commissioners &c., 90 Md. 689; s. c. 45 Atl. 882.

[104] Morley v. Village of Buchanan, 124 Mich. 128; s. c. 82 N. W. 802.

[105] Downs v. City of Ansonia, 73 Conn. 33; s. c. 46 Atl. 243.

[106] Rider v. City of Amsterdam, 65 N. Y. S. 579; s. c. 31 Misc. (N. Y.) 375.

[107] Schuett v. City of Stillwater, 80 Minn. 287; s. c. 83 N. W. 180.

[108] Jordan v. City of Benwood, 42 W. Va. 312; s. c. 26 S. E. 266; 36 L. R. A. 519; Bedell v. Village of Sea Cliff, 46 N. Y. S. 226; s. c. 18 App. Div. (N. Y.) 261; Cannon v. City of St. Joseph, 67 Mo. App. 367.

[109] Parker v. City of Atchison, 58 Kan. 29; s. c. 48 Pac. 631.

[110] Willson v. Boise City (Idaho), 55 Pac. 887.

[111] Watson v. Town of New Milford, 72 Conn. 561; s. c. 45 Atl. 167.

deemed expedient by the legislature, in the distribution of the powers of government, to require the city, nolens volens, to perform a public service in which it, as a corporation, had no interest. In such case the employes are the servants and agents of the state, and not the city, and it is for this reason the doctrine of respondeat superior does not apply.[112] Negligence of a public officer engaged in the performance of a public duty which results in a personal injury to an employe, does not render the municipality liable,[113] and so the city is not liable for the acts of a liquor-licensing board, such board not being agents but public officers of the city.[114] Where a person is arrested without cause, is confined in the city jail and injured by reason of its improper construction and unwholesome condition, the city is not liable for such injuries, for the reason that the city is not responsible for an illegal arrest by a police officer, and respondeat superior does not apply.[115] Where a tort was committed by a chain-gang superintendent by imprisoning a person and compelling him to work, although it was done under instructions from county authorities, there is no liability.[116] The city is not liable for the acts of an officer in requiring a prisoner to break stone when he was not sentenced to hard labor,[117] nor generally for the negligence of any officer who is in the performance of duties imposed by law,[118] nor in the exercise of police powers, even under a void ordinance,[119] nor for endeavoring to enforce a void judgment for a fine where the offense was against the general law.[120] Although police officers are appointed by the municipality under authority of a statute, the city is not liable for their acts under the rule respondeat superior.[121] A city is not liable for negligent and wilful acts of city physicians,[122] nor for the acts of an officer which are unofficial, but the duties are imposed by resolution of the council.[123] Respond-

[112] Kinnare v. City of Chicago, 171 Ill. 332; s. c. 49 N. E. 536.

[113] Murphy v. Inhabitants &c., 176 Mass. 422; s. c. 57 N. E. 689. And so as to the torts of a general officer over whom the council exercises no control except of general orders or ordinances: Jensen v. City of Waltham, 166 Mass. 344; s. c. 44 N. E. 339.

[114] McGinnis v. Inhabitants &c., 176 Mass. 67; s. c. 57 N. E. 210.

[115] Gray v. Mayor &c., 111 Ga. 361; s. c. 36 S. E. 792; Bean v. City of Middlesboro (Ky.), 57 S. W. 478.

[116] Bailey v. Fulton Co., 111 Ga. 313; s. c. 36 S. E. 596.

[117] Royce v. Salt Lake City, 15 Utah 401; s. c. 49 Pac. 290.

[118] Sievers v. City &c. of San Francisco, 115 Cal. 648; s. c. 47 Pac. 687.

[119] Easterly v. Town of Irwin, 99 Iowa 694; s. c. 68 N. W. 919; City of Caldwell v. Prunelle, 57 Kan. 511; s. c. 46 Pac. 949.

[120] Fox v. City of Richmond, 19 Ky. L. 326; s. c. 40 S. W. 251.

[121] Woodhull v. City of New York, 150 N. Y. 450; s. c. 44 N. E. 1038.

[122] Bates v. City of Houston, 14 Tex. Civ. App. 287; s. c. 37 S. W. 383.

[123] Gray v. City of Detroit, 113 Mich. 657; s. c. 71 N. W. 1107.

eat superior does apply where an act is within the general scope of the corporate powers, and is in the execution of such powers, but is done in such negligent and unlawful manner as to injure others.[124] The fact that a department is created by law for the performance of a public duty does not relieve the city from liability growing out of negligence in the performance of duties voluntarily assumed.[125]

§ 788. **Negligence as an element in tort.**—The propriety of considering negligence as an element in the subject of torts may be doubted. Negligence in municipal affairs usually arises in connection with streets, alleys and sidewalks, and is fully treated in that connection and will be only briefly considered here. Negligence as applied to the management of municipal affairs is not susceptible of definition, and is only made plain by illustration. The application of the doctrine of negligence can only be considered with reference to the facts and circumstances of each case and there are no well-defined rules governing the subject. The existence of negligence in any case is a question of fact to be determined by the jury.[125a] In order that the city may be held liable for negligence it is essential that it shall have knowledge of the negligent act, or notice thereof. Notice, however, is not required where the negligent act is the act of the servants of the city.[126] Again, what is sufficient notice of the negligent act is a question of fact for the jury.[127] Knowledge of the defect is not conclusive evidence of negligence.[128] Officers of a city are chargeable with knowledge which it is their duty to possess, as such officers.[129] Notice should be given to such officers as are chargeable with the duty of care, as in case of streets, sidewalks, etc., although it has been held that notice to the mayor is notice to the city of a trespass by its officers.[130] As to negligence in the case of children receiving injury

[124] Boye v. City of Albert Lea, 74 Minn. 230; s. c. 76 N. W. 1131.

[125] Twist v. City of Rochester, 55 N. Y. S. 850; s. c. 37 App. Div. (N. Y.) 307.

[125a] City of Ft. Scott v. Peck, 5 Kan. App. 593; s. c. 49 Pac. 111; Sheridan v. Mayor &c., 33 N. Y. S. 71; s. c. 12 Misc. (N. Y.) 47; Roach v. City of Ogdensburg, 36 N. Y. S. 112; s. c. 91 Hun (N. Y.) 9; Rumsey v. City of Philadelphia, 171 Pa. St. 63; s. c. 32 Atl. 1133; Fuchs v. City of St. Louis, 133 Mo. 168; s. c. 31 S. W. 115; 34 S. W. 508.

[126] City of Dallas v. Cooper (Tex. Civ. App.), 34 S. W. 321.

[127] Sproul v. City of Seattle, 17 Wash. 256; s. c. 49 Pac. 489; Smith v. Mayor &c., 45 N. Y. S. 239; s. c. 17 App. Div. (N. Y.) 438.

[128] Nichols v. Incorporated Town of Laurens, 96 Iowa 388; s. c. 65 N. W. 335; Mayor &c. v. Starr, 112 Ala. 98; s. c. 20 So. 424.

[129] Carstesen v. Town of Stratford, 67 Conn. 428; s. c. 35 Atl. 276.

[130] City of San Antonio v. Mackey's Estate, 22 Tex. Civ. App. 145; s. c. 54 S. W. 33. Where the question of

through fault of the city the law is somewhat different, in some respects, from that applicable to persons of mature age. It has been held that the city is liable for death of a child falling from a section of the sidewalk it was using as a raft on a pond of water accumulated by the city's negligence in grading for a sewer,[131] and for leaving a sand-pit in close proximity to a street open and unprotected, whereby a child enters the pit and is injured.[132] And so where there is a half-block of ground in a populous city bounded on two sides by public streets and on a third by a public alley, on which is a dangerous pond or pit, in which the water is from five to fourteen feet deep, with logs floating upon it on which children were in the habit of playing, and the city had been notified of the attractiveness to children and the dangerous character thereof, and an injury ensues to a child seven years old, the city is liable.[133] Undoubtedly the general rule of law is that an owner of premises is not required to keep his premises in a safe condition for the benefit of trespassers who come upon them without invitation, express or implied, for their own pleasure or to gratify their own curiosity.[134] But an exception to this general rule exists in its application to children. Thus where the owner of premises leaves them open and unguarded and they are of such nature and character as to be an attraction to children, appealing to their childish curiosity, the owner becomes liable for an injury. In such case the owner should reasonably anticipate the injury.[135] If the property is

negligence is one for the jury and the evidence is conflicting and the verdict of the jury in the trial court is approved by that court it will not be disturbed by the appellate court: City of Ft. Scott v. Peck, 5 Kan. App. 593; s. c. 49 Pac. 111. A finding that the village had notice is sufficient where a village trustee nailed down the loose board which caused the injury, but the stringers being decayed were insufficient to hold: Village of Sorento v. Johnson, 52 Ill. App. 659.

[131] City of Omaha v. Richards, 49 Neb. 244; s. c. 68 N. W. 528.

[132] Hawley v. City of Atlantic, 92 Iowa 172; s. c. 60 N. W. 519.

[133] City of Pekin v. McMahon, 154 Ill. 141; s. c. 39 N. E. 484.

[134] City of Pekin v. McMahon, supra.

[135] City of Pekin v. McMahon, supra. The cases which sustain this doctrine, usually known as the Turn-table Cases, are: Keffe v. Milwaukee &c. R. Co., 21 Minn. 207; Kansas City &c. R. Co. v. Fitzsimmons, 22 Kan. 686; Koons v. St. Louis &c. R. Co., 65 Mo. 592; Union Pac. R. Co. v. Dunden, 37 Kan. 1; s. c. 14 Pac. 501; Evanisch v. G. C. & S. F. R. Co., 57 Tex. 123; Ferguson v. Columbus &c. R. Co., 75 Ga. 637; s. c. 77 Ga. 102; St. Louis &c. R. Co. v. Bell, 81 Ill. 76. Other cases of a similar nature are: Mackey v. City of Vicksburg, 64 Miss. 777; s. c. 2 So. 178; Birge v. Gardner, 19 Conn. 507; Daley v. Norwich &c. R. Co., 26 Conn. 591; Powers v. Harlow, 53 Mich. 507; s. c. 19 N. W. 257; Hydraulic Works Co. v. Orr, 83 Pa. St. 332; Whirley v. Whiteman, 1 Head (Tenn.) 610. For an exhaustive note on the liability for dangerous

not immediately on the highway it has been held there was no liability.[136] And so where the agency of the injury was not attractive to children there would be no negligence.[137]

§ 789. **Liability for collision of vessels.**—Where a city under power in its charter enters into the business of towing vessels for profit and by negligence causes injury to another vessel by collision, it is liable.[138] The reason for the liability in this class of cases is based upon the fact that when a city voluntarily assumes the exercise of powers which are private in their nature, and for profit, it is liable to suit and the measure of actual damage that an individual or private corporation would subject itself to under similar circumstances.[139] The city is liable for the collision of its fire-boat with another vessel through the negligence of the former. In such case the fire-department does not act as an instrumentality of the state, but rather of the municipality.[140] A city is liable for a collision of its ice-boat with another vessel moored at a dock while the ice-boat is engaged in private service for the owners of the dock, gratuitously or for compensation.[141]

§ 790. **Torts of independent contractor.**—The city is liable for an injury although it may have employed an independent contractor to do the work, where the work is done under specifications by the city, and is in conformity therewith, and the injury is the proximate and necessary result of the work contracted for.[142] The city is liable for

condition of private grounds lying open beside a highway or frequented paths, see note to Lepnick v. Gaddis, 72 Miss. 200; s. c. 16 So. 213, in 26 L. R. A. 686. But upon this subject the authorities are not entirely harmonious: Gillespie v. McGowan, 100 Pa. St. 144; Hargreaves v. Deacon, 25 Mich. 1; Klix v. Nieman, 68 Wis. 271; s. c. 32 N. W. 223; Schmidt v. Kansas City Dist. Co., 90 Mo. 284; s. c. 1 S. W. 865; 2 S. W. 417; City of Indianapolis v. Emmelman, 108 Ind. 530; s. c. 9 N. E. 155; Clark v. City of Richmond, 83 Va. 355; s. c. 5 S. E. 369; Clark v. Manchester, 62 N. H. 577; Trost v. Eastern R. Co., 64 N. H. 220; s. c. 9 Atl. 790.

[136] Gillespie v. McGowan, 100 Pa. St. 144.

[137] Hargreaves v. Deacon, 25 Mich. 1; Schmidt v. Kansas City Dist. Co., 90 Mo. 284; s. c. 1 S. W. 865; 2 S. W. 417; Klix v. Nieman, 68 Wis. 271; s. c. 32 N. W. 223.

[138] City of Philadelphia v. Gavagnin, 62 Fed. 617; s. c. 10 C. C. A. 552.

[139] City of Philadelphia v. Gavagnin, supra; The Giovanni v. City of Philadelphia, 59 Fed. 303.

[140] Workman v. City of New York, 63 Fed. 298. A city is liable for a collision of a fire-tug with another vessel. This is contrary to the common law and grows out of the principles of maritime law. Inasmuch as public policy forbids a seizure of the vessel as in other maritime cases the judgment is in personam: Thompson N. W. Co. v. City of Chicago, 79 Fed. 984.

[141] Guthrie v. City of Philadelphia, 73 Fed. 688.

[142] City of Louisville v. Shannahan, 22 Ky. L. 163; s. c. 56 S. W. 808.

improper materials and work by a contractor where all materials were subject to the approval of a commissioner of public improvements, and the location of a wall was designated by a city engineer and was built under the supervision of the engineer or his assistants.[143] The city is liable for failure to require the contractor to use care to prevent injury.[144] It is probable that where city authorities employ a contractor to do what they are empowered by statute to do, which is dangerous in its nature, the city is liable for injuries.[145]

§ 791. **Miscellaneous matters in relation to torts.**—Where the city gave authority to abutting owners to make excavations dangerous to the public and has notice thereof, it is liable,[146] but not so if it has given no permission.[147] Where there is a valid ordinance and grading is done without provision for and the payment of damages to an abutting owner, the city is liable.[148] A city in the exercise of a governmental power in granting a railroad company the right to construct a tunnel under a street is not liable for damages occasioned by the company.[149] It is not a defense in an action for negligence that a lawful act was performed in an unlawful manner, as where an improvement was required to be made under contract and was in fact done by or under the direction of the superintendent of streets.[150] Where the city is prosecuting work through its officials and at its expense, it will not be heard to say that through irregularity in the proceedings the work was without authority of law.[151] A municipal corporation is not liable in tort when the alleged tort consists in a breach of a contract which is void by being prohibited by the constitution.[152] A county, occupying a leased building, is liable for its loss by fire if occasioned by the negligence of officers charged with its care.[153] Though an ordinance shows an abuse of discretionary power vested in the municipality, it is not liable for damages caused by the

[143] Goldschmid v. Mayor &c., 43 N. Y. S. 447; s. c. 14 App. Div. (N. Y.) 135.

[144] White v. Mayor &c., 44 N. Y. S. 454; s. c. 15 App. Div. (N. Y.) 440.

[145] Hardaker v. Idle Dist. Council, 1 Q. B. D. 335.

[146] Sproul v. City of Seattle, 17 Wash. 256; s. c. 49 Pac. 489.

[147] Jones v. City of Clinton, 100 Iowa 333; s. c. 69 N. W. 418.

[148] Rives v. City of Columbia, 80 Mo. App. 173.

[149] Terry v. City of Richmond, 94 Va. 537; s. c. 27 S. E. 429.

[150] Donahew v. City of Kansas City, 136 Mo. 657; s. c. 38 S. W. 571. To the same effect is Collensworth v. City of New Whatcom, 16 Wash. 224; s. c. 47 Pac. 439.

[151] Norton v. City of New Bedford, 166 Mass. 48; s. c. 43 N. E. 1034.

[152] Schulenberg &c. Co. v. City of East St. Louis, 63 Ill. App. 214; s. c. 166 Ill. 232; 46 N. E. 728; Prince v. City of Quincy, 28 Ill. App. 490.

[153] Williams v. Board &c., 61 Kan. 708; s. c. 60 Pac. 1046.

enactment and enforcement of such ordinance.[154] The city is not liable for an injury growing out of the use of impure vaccine under an ordinance requiring all citizens and residents to be vaccinated.[155] A city is not liable for an injury to property on a wharf-boat which grows out of the negligence of one to whom the city had leased the wharf and privileges.[156] Where a public work by reason of its nature and location injures a person, and which could have been avoided by the exercise of reasonable prudence as to plan and location, the city and contractor are liable.[157]

§ 792. **Non-liability for firemen.**—Members of a fire-department, as officers charged with a public service, are not the agents or servants of the city which appoints them, and the city is therefore not liable for their negligent discharge of official duty,[158] nor is it liable for neg-

[154] Rosenbaum v. City of Newbern, 118 N. C. 83; s. c. 24 S. E. 1.

[155] Wyatt v. City of Rome, 105 Ga. 312; s. c. 31 S. E. 188; 42 L. R. A. 180; Sherbourne v. Yuba Co., 21 Cal. 113; Summers v. Board &c., 103 Ind. 262; s. c. 2 N. E. 725; Ogg v. City of Lansing, 35 Iowa 495; Love v. City of Atlanta, 95 Ga. 129; s. c. 22 S. E. 29.

[156] Carrollton &c. Mfg. Co. v. City of Carrollton, 20 Ky. L. 818; s. c. 47 S. W. 439, 885.

[157] De Baker v. Southern &c. R. Co., 106 Cal. 257; s. c. 39 Pac. 610; Carstesen v. Town of Stratford, 67 Conn. 428; s. c. 35 Atl. 276.

[158] Smith v. City of Rochester, 76 N. Y. 506. A city is not responsible for the torts of its firemen: Kies v. City of Erie, 135 Pa. St. 144; s. c. 19 Atl. 942; Knight v. City of Philadelphia, 15 W. N. C. (Pa.) 307; Fire Ins. Patrol v. Boyd, 120 Pa. St. 624; s. c. 15 Atl. 553. A city is not liable for the negligent driving of a member of its fire-department in going to a fire, though the department be under its direct control, management and operation, and the members of it be employed and paid by the city: Alexander v. City of Vicksburg, 68 Miss. 564; s. c. 10 So. 62. In Hayes v. City of Oshkosh, 33 Wis. 314, Dixon, C. J., said:—"The grounds of exemption from liability are that the corporation is engaged in a public service in which it has no particular interest, . . . but which it is bound to see performed in pursuance of a duty imposed by law for the general welfare; that the members of the fire-department, though appointed by the city corporation, are not, when acting in the discharge of their duties, servants or agents of the city, but they act rather as public officers charged with a public service for whose negligence or misconduct in the discharge of official duty no action will lie against the city unless expressly given." In Fisher v. Boston, 104 Mass. 87, Gray, J., said:—"Nor is it material that in Boston a fire-department has been established and is regulated under a special statute accepted by the city council: Stat. 1850, ch. 262. The engineers and members of that department are no less public officers and no more agents of the city than fire-wards and similar officers under the general statutes. In the leading case of Hafford v. City of New Bedford, 16 Gray (Mass.) 297, the fire-department, for the negligence of whose members the city was held not to be

ligence in the performance of a public duty imposed by law, to a member of its fire-department injured by reason of a defective brake on an engine.[159] The fire commissioners of the city of New York being public officers and not its agents, it is not liable for their wrongful dismissal of a fireman.[160]

§ 793. **Non-liability for police.**—Municipal corporations are not liable for the torts or negligence of policemen because the duties of those officers are of a public nature and their appointment is devolved by the legislature on cities, towns and boroughs as a convenient mode of exercising a public function;[161] thus a borough was held not liable where a policeman stood by and made no effort to stop the firing of cannon on a public street.[162] And a city is not liable for an illegal arrest and imprisonment by the police,[163] or for their unnecessary violence,[164] or for their accidental shooting of a

liable to an action, was established and regulated and its officers and members appointed under a similar special statute. . . . However appointed or elected such persons are public officers who perform duties imposed by law for the benefit of all the citizens, the performance of which the city or town has no control over and derives no benefit from in its corporate capacity. The acts of such officers are their own official acts and not the acts of the municipal corporation or its agents." And see Mayor &c. v. Workman, 67 Fed. 347; s. c. 14 C. C. A. 530; Shanewerk v. City of Fort Worth, 11 Tex. Civ. App. 271; s. c. 32 S. W. 918.

[159] Wild v. Mayor &c., 47 N. J. L. 406; s. c. 1 Atl. 490. And it makes no difference that the injury occurred while a fire-tower was being tested preparatory to its purchase by the city: Thompson v. Mayor &c., 52 N. Y. Super. 427.

[160] Terhune v. Mayor &c., 88 N. Y. 247, 251.

[161] Perkins v. City of New Haven, 53 Conn. 214; s. c. 1 Atl. 825. In Iowa it has been repeatedly decided that as the police regulations of a city are not made and enforced in the interest of the city in its corporate capacity, but in the interest of the public, it is not liable for the acts of its officers in enforcing such regulations: Ogg v. City of Lansing, 35 Iowa 495; Calwell v. City of Boone, 51 Iowa 687; s. c. 2 N. W. 614.

[162] Borough of Norristown v. Fitzpatrick, 94 Pa. St. 121. See also, Elliott v. City of Philadelphia, 75 Pa. St. 347, where a horse in the custody of a policeman was killed through his negligence. Policemen do not derive their powers and duties from the city or town which appoints them, but from the law: Buttrick v. City of Lowell, 1 Allen (Mass.) 172; and are not the city's servants: Kimball v. City of Boston, 1 Allen (Mass.) 417; People v. Shepard, 36 N. Y. 285; Burch v. Hardwicke, 30 Gratt. (Va.) 24.

[163] Harris v. City of Atlanta, 62 Ga. 290; Cook v. Mayor &c., 54 Ga. 468.

[164] Calwell v. City of Boone, 51 Iowa 687; s. c. 2 N. W. 614. See also, McElroy v. City Council &c., 65 Ga. 387. A complaint in a suit against a city which alleges that a policeman of the city arrested plaintiff for a supposed violation of a city ordinance, without a warrant, and without affidavit made as required by law; that plaintiff had not violated

citizen.[165] A city is not liable to one who is injured while aiding, at their request, its police to make an arrest.[166]

§ 794. **Liability for acts of mobs.**—Municipal liability for injury to person or property caused by a mob does not exist at common law,[166a] and does not rest upon contract between the city and the sufferer, but is wholly statutory.[167] It is well settled that a statute creating such a liability is not unconstitutional.[168] Under the Pennsylvania mob laws of 1841 and 1849 it is held that the fact that the authorities are unable to quell a riot, and that the property injured is in transitu and belongs to non-residents, does not limit the county's liability for damages.[169] Under the New York mob laws a city is liable for goods carried away by a mob as well as for those destroyed on the premises; and it is not a good defense for the city that the

the ordinance; and that the policeman was incompetent, to the knowledge of the city,—states no cause of action: Rusher v. City of Dallas, 83 Tex. 151; s. c. 18 S. W. 333.

[165] Culver v. City of Streator, 130 Ill. 238; s. c. 22 N. E. 810.

[166] Cobb v. City of Portland, 55 Maine 381, where the court said:—"But the plaintiff was not the servant of the city nor was the policeman whom he assisted. Both were acting under the authority of the state as the conservators of the public peace—the peace of the state, not the peace of the city of Portland alone. It is true they derived their authority from the city, but that was done by act of the legislature as a matter of convenience. . . . The obligation devolved by statute upon the city to appoint police officers . . . confers no particular interest, benefit or advantage upon it in its corporate capacity and creates no liability on its part for the acts of those officers." See also, Western College v. City of Cleveland, 12 Ohio St. 375; Borough of Norristown v. Fitzpatrick, 94 Pa. St. 121; Campbell v. City Council &c., 53 Ala. 527.

[166a] Robinson v. Greenville, 42 Ohio St. 625, where Okey, J., said:—"Thus, with respect to the power to suppress riots and assemblages of disorderly persons, it has been uniformly held that the corporation is a mere agency of the state, and not liable for negligence in the performance of such duties. Upon this principle it has been held that there is no corporate liability for the acts of a mob although the charter contains this provision as to the duties of council,—that it shall be their duty to regulate the police of the city, preserve the peace, prevent riots, disturbances and disorderly assemblages."

[167] Louisiana v. Mayor &c., 109 U. S. 285; s. c. 3 S. Ct. 211. So, a city which has failed to prohibit the firing of cannon in its public parks, or given its legislative sanction to such firing on certain conditions, is not liable for injuries to individuals caused by such firing if there is no statute giving an action therefor: Lincoln v. City of Boston, 148 Mass. 578; s. c. 20 N. E. 329.

[168] Louisiana v. Mayor &c., 109 U. S. 285; s. c. 3 S. Ct. 211; Darlington v. Mayor &c., 31 N. Y. 164.

[169] Allegheny Co. v. Gibson, 90 Pa. St. 397.

crowd at first collected to see a fire, if it afterwards united in unlawful conduct.[170] And the fact that plaintiff keeps a disorderly house is not a good defense.[171] If a building is not a nuisance per se, the town may be liable for its destruction by a mob, though under conditions its erection be prohibited.[172] The city is liable for property destroyed by a mob or riot in the absence of the owner's consent or contributory negligence on his part where the general municipal law declares that the city shall be liable in damages for the destruction of property by mobs or riots.[173] The Illinois statute (1887) makes a city liable for property other than property in transit destroyed by a mob or riot composed of twelve or more persons.[174] The Illinois statute (1895) providing that when any property, except property in transit, shall be destroyed or injured by a mob or riot of twelve or more persons, the city or county shall be liable for the injury to the extent of three-fourths the damages, is constitutional.[175] That the mob was composed mainly of employes of plaintiff is not a defense.[176] It is not the duty of the owner of property destroyed by a mob to employ an armed force of men to defend his property.[177] Under the Kansas statute making cities and towns liable for injury by mobs, evidence was admitted that a person killed by a mob was guilty of misconduct or crime within a reasonable time prior to the killing which may have influenced the mob, or which might affect his value to next of kin.[178] A city is not liable for the loss of life by a mob.[179]

§ **795. Private interests must yield to public.**—As public accommodation must prevail over private interests, a city is not liable for a private injury which is incidental to an authorized public improvement; for example, for raising or lowering the grade of a street under authority of law, though an abutting owner's house may thereby be left standing high above the grade or in a hollow below it. The individual can have no compensation for the inconveniences which fairly

[170] Solomon v. City of Kingston, 24 Hun (N. Y.) 562; Sarles v. Mayor &c., 47 Barb. (N. Y.) 447.

[171] Ely v. Board &c., 36 N. Y. 297.

[172] Brightman v. Inhabitants &c., 65 Maine 426.

[173] Marshall v. City of Buffalo, 64 N. Y. S. 411; s. c. 50 App. Div. (N. Y.) 149.

[174] Spring Valley Coal Co. v. City of Spring Valley, 65 Ill. App. 571.

[175] Pennsylvania Co. v. City of Chicago, 81 Fed. 317; Underhill v. City of Manchester, 45 N. H. 214; Darlington v. Mayor &c., 31 N. Y. 164; Allegheny Co. v. Gibson, 90 Pa. St. 397. And see Louisiana v. Mayor &c., 109 U. S. 285; s. c. 3 S. Ct. 211.

[176] Spring Valley Coal Co. v. City of Spring Valley, 65 Ill. App. 571.

[177] Spring Valley Coal Co. v. City of Spring Valley, 65 Ill. App. 571.

[178] Adams v. City of Salina, 58 Kan. 246; s. c. 48 Pac. 918.

[179] City of New Orleans v. Abbagnato, 62 Fed. 240; s. c. 10 C. C. A. 361.

result from the making of needed public improvements, as he is supposed to be recompensed by the enhancement of the general welfare.[180] The rule just laid down is well illustrated in the case of the Brooklyn bridge. The Brooklyn bridge over the East river, being erected by the two cities under authority derived from congress and the New York legislature, can not be abated as a public nuisance, and the public benefit from it far outweighs any inconvenience to individuals by interfering with navigation.[181] Acts done in the proper exercise of governmental powers and not directly encroaching upon private property, though impairing its use, are held not to be a *taking* within the constitutional provision.[182] And a lot-owner who has petitioned for a public improvement and has had his day in court on a review of the assessment therefor, and has failed to exercise his right

[180] Vidalat v. City of New Orleans, 43 La. An. 1121; s. c. 10 So. 175; Hembling v. City of Big Rapids, 89 Mich. 1; s. c. 50 N. W. 741; City of Pontiac v. Carter, 32 Mich. 164. In Governor &c. v. Meredith, 4 T. R. 794, Lord Kenyon thus states the reasons which preclude a private remedy in such cases:—"If this action could be maintained every turnpike, paving and navigation act would give rise to an infinity of actions. If the legislature think it necessary, as they do in many cases, they enable the commissioners to award satisfaction to the indivduals who happen to suffer. But if there be no such power the parties are without remedy, provided the commissioners do not exceed their jurisdiction. Some individuals suffer an inconvenience under all these acts of parliament, but the interests of individuals must give way to the accommodation of the public." See also, Boulton v. Crowther, 2 B. & C. 703; King v. Commissioners, 8 B. & C. 355; Callender v. Marsh, 1 Pick. (Mass.) 418; Smith v. Corporation &c. of Washington, 20 How. 135. In Glasgow v. St. Louis, 107 Mo. 198; s. c. 17 S. W. 743, it was held that an owner had no redress by injunction or damages for the vacating of a street upon which he did not abut; as there was no physical interference with his property or any easement thereof, the inconvenience he suffered with others did not entitle him to relief under the clause of the constitution "that private property shall not be taken or damaged for public use without just compensation." See § 662, ante.

[181] Miller v. Mayor &c., 109 U. S. 385; s. c. 3 S. Ct. 228. See also, Escanaba &c. Co. v. City of Chicago, 107 U. S. 678; s. c. 2 S. Ct. 185; Gilman v. City of Philadelphia, 3 Wall. 713.

[182] Atwater v. Trustees &c., 124 N. Y. 602; s. c. 27 N. E. 385; Transportation Co. v. Chicago, 99 U. S. 635, 641. A city is not liable unless made so by statute or charter for consequential injuries to property adjacent to a public street caused by a change lawfully made of the grade of a street: Henderson v. City of Minneapolis, 32 Minn. 319; s. c. 20 N. W. 322; Lee v. City of Minneapolis, 22 Minn. 13. But is liable if in so changing a grade it removes the lateral support of an abutting lot: Dyer v. City of St. Paul, 27 Minn. 457; s. c. 8 N. W. 272; Nichols v. City of Duluth, 40 Minn. 389; s. c. 42 N. W. 84.

to appear before the city council to claim damages therefor, is thereby estopped to recover damages in an independent action.[183] Mere non-resistance to a projected improvement or the joining in a petition for it does not estop a lot-owner from claiming compensation for an injury caused by it;[184] but the active promotion and superintendence of the improvement may amount to such estoppel.[185] The remedy of a person claiming to be unfairly assessed for a local improvement is to apply to the statutory tribunal vested with the power of review; and where no constitutional objection is raised or fraud charged, the inquiry in such a case will be limited to the question whether the municipal authorities have acted within their powers.[186]

§ 796. **The same subject continued—Destroying buildings to check fire.**—Unless made so by statute a city is not liable to individuals for the necessary destruction of buildings in order to prevent a conflagration.[187] Such a destruction of private property is not a taking for public use entitling the owner to compensation.[188] In Pennsylvania the mayor of a city is by virtue of his official position justified in demolishing a wooden building which is dangerous to the public safety.[189]

§ 797. **Non-liability for negligence in public service.**—Where a city, under the authority of a general law, undertakes a work for the sole use and benefit of the public, it is not liable for an injury caused by the negligent or defective performance of such work by its agents or servants, unless some statute either directly or by implication gives

[183] Hembling v. City of Big Rapids, 89 Mich. 1; s. c. 50 N. W. 741; Brown v. City of Grand Rapids, 83 Mich. 101; s. c. 47 N. W. 117; Peninsula Iron &c. Co. v. Crystal Falls Tp., 60 Mich. 510; s. c. 27 N. W. 666; Comstock v. City of Grand Rapids, 54 Mich. 641; s. c. 20 N. W. 623; Williams v. City of Saginaw, 51 Mich. 120; s. c. 16 N. W. 260.

[184] Jones v. Borough of Bangor, 144 Pa. St. 638; s. c. 23 Atl. 252.

[185] Bidwell v. City of Pittsburgh, 85 Pa. St. 412. And see Dewhurst v. City of Allegheny, 95 Pa. St. 437; McKnight v. City of Pittsburgh, 91 Pa. St. 273.

[186] Kansas City Grading Co. v. Holden, 107 Mo. 305; s. c. 17 S. W. 798.

[187] In Bowditch v. Boston, 101 U. S. 16, Swayne, J., said:—"In order to charge the city, the remedy being given by statute only, the case must be clearly within the statute. The city is responsible by force of the statute only, and such responsibility is limited to the cases specially contemplated." See also, Taylor v. Inhabitants &c., 8 Met. (Mass.) 462, 465; Field v. City of Des Moines, 39 Iowa 575. As to the statutory liability of the city of New York in such a case, see Mayor &c. v. Lord, 18 Wend. (N. Y.) 126; Russell v. Mayor &c., 2 Denio (N. Y.) 461.

[188] Stone v. Mayor &c., 25 Wend. (N. Y.) 157, 174; Russell v. Mayor &c., 2 Denio (N. Y.) 461.

[189] Fields v. Stokley, 99 Pa. St. 306.

a private remedy for such injury.[190] This rule has been applied against a traveler injured by negligent blasting while excavating the foundation of a public schoolhouse;[191] and against a child injured by reason of an unsafe staircase of a schoolhouse and a dangerous excavation in a schoolhouse yard.[192] The same rule has been applied in favor of cities in respect to town-houses and court-houses;[193] and in respect to public grounds like Boston Common.[194] And it makes no material difference in the application of the rule whether the injury is caused by a negligent act done in the direct performance of the public work or is received after the completion of the work.[195] As an apparent exception to the foregoing general rule, cities and towns have been held liable for injuries caused by the negligent construction of roads and bridges.[196] In Texas where a city established a place for the burial of carcasses and garbage in order to improve its sanitary condition, it was held not to be liable to an individual for sickness produced thereby, as the intended improvement was in the interest of

[190] Howard v. City of Worcester, 153 Mass. 426; s. c. 27 N. E. 11. "In the absence of a statute creating the liability, no action can be maintained against a municipal corporation for an injury arising from the neglect of a public corporate duty from the performance of which the corporation receives no special benefit, pecuniary or otherwise:" Allen, J., in Clark v. Manchester, 62 N. H. 577. See also, Edgerly v. Concord, 62 N. H. 8.

[191] Howard v. City of Worcester, 153 Mass. 426; s. c. 27 N. E. 11.

[192] Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332; Bigelow v. Inhabitants &c., 14 Gray (Mass.) 541; Sullivan v. City of Boston, 126 Mass. 540. See also, Wixon v. City of Newport, 13 R. I. 454.

[193] Eastman v. Meredith, 36 N. H. 284; Board &c. v. Mighels, 7 Ohio St. 109. A county is not liable for injuries caused by its neglect to provide a railing around a veranda on the second floor of the court-house, where no liability is imposed by statute: Sheppard v. Pulaski Co., 13 Ky. L. 672; s. c. 18 S. W. 15.

[194] Steele v. City of Boston, 128 Mass. 583; Oliver v. City of Worcester, 102 Mass. 489; Clark v. Inhabitants &c., 128 Mass. 567; Veale v. City of Boston, 135 Mass. 187.

[195] Howard v. City of Worcester, 153 Mass. 426; s. c. 27 N. E. 11; Tindley v. City of Salem, 137 Mass. 171; Lincoln v. City of Boston, 148 Mass. 578; s. c. 20 N. E. 329; Fisher v. City of Boston, 104 Mass. 87; Hafford v. City of New Bedford, 16 Gray (Mass.) 297.

[196] See Lawrence v. Inhabitants &c., 5 Gray (Mass.) 110; Deane v. Inhabitants &c., 132 Mass. 475; Waldron v. City of Haverhill, 143 Mass. 582; s. c. 10 N. E. 481. "These cases, however, rest on grounds which take them out of the general rule, and in the last resort it must be properly considered that, taking all the statutes together which relate to the construction of roads and bridges, it is to be inferred that the legislature intended to recognize the existence of a liability for the consequences of negligence in the performance of the work:" Allen, J., in Howard v. City of Worcester, 153 Mass. 426; s. c. 27 N. E. 11.

the public and the execution of it was not attended with negligence; but the court added that if the acts done had been for the city's private advantage it would have been liable for the injury irrespective of the question of negligence.[197] Though a municipal work be made and maintained for a time for a public purpose, yet if such purpose be abandoned and it be used for a private purpose, the city becomes liable for negligence in such case as any other private corporation would be.[198]

§ 798. **Liability in matters of arrest.**—The municipality is not liable for the acts of a police officer in making an arrest for a violation or an ordinance,[199] but is liable for imprisonment for default in payment of a fine under an ordinance which is unconstitutional.[200] A city is not liable for the mayor causing a person charged with a violation of an ordinance to give a larger bond for appearance than the law authorized, thus causing confinement through inability to give bond.[201] Although the ordinance be void, the city is not liable in damages for an arrest thereunder in the absence of malice, and where the city acts in good faith, [202] nor for making an arrest for a breach of the peace under a void ordinance.[203] Where the mayor, police force and city physician commit a trespass in detaining yellow-fever suspects and confining them in plaintiff's hotel for six days without authority or ratification of the council, the city is not liable.[204] A municipality is not liable for an injury resulting from exposure of a violator of an ordinance from which he contracted a disease and died. The placing the prisoner in a dilapidated prison is in the exercise of a governmental function from which no liability results.[205]

§ 799. **Non-liability as to jails.**—A county is not liable to a prisoner for injury to his health caused by failure of the supervisors to

[197] Fort Worth v. Crawford, 64 Tex. 202; s. c. 53 Am. R. 753.

[198] Clark v. Manchester, 62 N. H. 577.

[199] Vaughlman v. Town of Waterloo, 14 Ind. App. 649; s. c. 43 N. E. 476. See Gullikson v. McDonald, 62 Minn. 278; s. c. 64 N. W. 812.

[200] McGraw v. Town of Marion, 98 Ky. 673; s. c. 34 S. W. 18.

[201] Gray v. Mayor &c., 111 Ga. 361; s. c. 36 S. E. 792.

[202] Masters v. Village of Bowling Green, 101 Fed. 101.

[203] Taylor v. City of Owensboro, 98 Ky. 271; s. c. 32 S. W. 948. The city is not liable for an unlawful arrest and imprisonment of police officers: Kelley v. Cook, 21 R. I. 29; s. c. 41 Atl. 571.

[204] City of San Antonio v. White (Tex. Civ. App.), 57 S. W. 858.

[205] Eddy v. Village of Ellicottville, 54 N. Y. S. 800; s. c. 35 App. Div. (N. Y.) 256. For acts of officer in confining a person in his own house, as a quarantine measure, see Tilford v. Mayor &c., 37 N. Y. S. 185; s. c. 1 App. Div. (N. Y.) 199.

keep the county jail in a sanitary condition;[206] nor for assaults upon him by violent and intoxicated fellow prisoners with whom the police had negligently confined him.[207] In Kentucky such liability is imposed upon members of the county court instead of upon the county.[208] In Georgia a county is not responsible for the tort of one of the guards in unlawfully beating a convict, nor for the negligence of the other guards in not protecting him from such beating;[209] nor is a city liable for a tort committed by one of its convicts on the person of another.[210] In Virginia chartered towns and cities are not deemed political divi-

[206] A person confined for nearly four months in a county jail under an indictment for forgery, which was then dismissed, can not recover from the county for injuries to his health, caused by the negligent failure of the board of supervisors to keep the jail in a healthy condition: Lindley v. Polk Co., 84 Iowa 308; s. c. 50 N. W. 975. The care and control of prisons being within the police power, a county is not liable for the failure of its officers to keep the county jail in a healthy condition: White v. Board &c., 129 Ind. 396; s. c. 28 N. E. 846; followed in Board &c. v. Boswell, 4 Ind. App. 133; s. c. 30 N. E. 534. A convict in the Albany penitentiary alleged that he lost his hand through the negligence of the county in compelling him to approach a circular-saw; a demurrer that the complaint did not state sufficient facts was sustained on the ground that the county while engaged in the public duty of building and managing the penitentiary was not a corporation but a mere instrumentality selected by the state: Alamango v. Albany Co., 25 Hun (N. Y.) 551. The city is not liable for negligence in caring for a person in the police-station: Kelley v. Cook, 21 R. I. 29; s. c. 41 Atl. 571. Nor for negligently maintaining its lockup: Gullikson v. McDonald, 62 Minn. 278; s. c. 64 N. W. 812. But see Shields v. Town of Durham, 118 N. C. 450; s. c. 24 S. E. 794.

[207] A city is not liable for personal injuries sustained by one prisoner at the hands of another confined in the same cell of the city prison, though the police officer who arrested the injured prisoner, and put him in prison, may have been guilty of negligence in confining him with an intoxicated fellow prisoner, who was on that account violent and dangerous: Wilson v. Mayor &c., 88 Ga. 455; s. c. 14 S. E. 710. Where one is confined in a city jail on a criminal charge, and is assaulted by other prisoners confined in the same room, he can not hold the city liable for such assault, on the ground of the negligence of its officers in not taking proper measures to protect him: Davis v. City of Knoxville, 90 Tenn. 599; s. c. 18 S. W. 254.

[208] General statutes Kentucky, ch. 28, art. 17, § 4, which provide that the county court shall cause a secure county jail to be erected and kept in repair, and that upon a failure so to do each member of the court whose name does not appear recorded in favor thereof shall be liable to a fine, and shall be liable in a civil action for all damage sustained by any person by reason thereof, does not authorize an action against the county for injuries caused by a defective jail: Hite v. Whitley Co. Court, 91 Ky. 168; s. c. 15 S. W. 57.

[209] Hammonds v. Richmond Co., 72 Ga. 188.

[210] Doster v. City of Atlanta, 72 Ga. 233.

sions of the state, as counties are, and their liability for unhealthy jails is the same in principle as for defective streets and sewers.[211] In Kansas a city is not liable for the bad condition of its prison in the absence of some statutory requirement to keep it in a proper condition.[212]

§ 800. **Non-liability as to hospitals.**—Where a city is, under its charter, a municipal government as well as corporation, and receives legislative powers in respect to the public health, it is not liable for the negligence or misconduct of the superintendent, nurses or attendants of its hospitals.[213] A corporation established for the maintenance of a public charitable hospital, which has exercised due care in the selection of its agents, is not liable for injury to a patient caused by their negligence, nor for the unauthorized assumption of one of the attendants to act as a surgeon, even though the patients be required to pay board.[214]

[211] Code Virginia, 1887, § 927, provides that every town having no jail of its own may use the county jail. Sections 928-930, applicable only to counties and cities, provide that the jailer shall keep the jail always clean, that jails shall be inspected under direction of the county court, and that the jailer may be summarily punished for failure in his duty. It was held that a town which used a jail of its own was liable for injuries to the health of a prisoner caused by its filthy condition; since, under § 927 and a special provision of its charter, it might have used a county jail, subject to inspection and control: Edwards v. Town of Pocahontas, 47 Fed. 268.

[212] Though the general statutes of Kansas, 1889, paragraph 1013, provide that, in a city of the third class, the chief of police shall have power "to keep all persons arrested in the city in the city prison, county jail, or other proper place," and paragraph 3552, that "all prisoners shall be treated with humanity," the city is not liable for injuries resulting from the confinement of a prisoner without bedding in a filthy and uninhabitable city prison: City of New Kiowa v. Craven, 46 Kan. 114; s. c. 26 Pac. 426.

[213] Benton v. Trustees &c., 140 Mass. 13; s. c. 1 N. E. 836. In City of Richmond v. Long, 17 Gratt. (Va.) 375, the city was held not to be liable for the death of a slave who, after being admitted to the city hospital, was negligently allowed to escape therefrom and die from exposure. After a thorough review of the facts and authorities Rives, J., said:—"If this recovery could be made I do not perceive why by parity of reason the state should not be held liable through its public functionaries in civil actions at the suit of individuals for losses or torts occurring in the management of its departments and public institutions under its immediate control and supervision. It can not be denied that in the municipal government of this city the council occupies towards its hospital relations quite similar to those of the general assembly towards its asylums for the insane, the blind, and deaf mutes."

[214] McDonald v. Massachusetts Gen'l Hospital, 120 Mass. 432, where Devens, J., said:—"Where actions have been brought against commissioners

§ 801. **Non-liability as to fireworks.**—The Massachusetts rule that cities or towns are not liable for negligence in matters of public service, whether the statutes require such service or only permit it, is deemed to exempt a city from liability to persons injured through the negligent discharge of authorized fireworks.[215] In states like New Jersey and New York, where the discharge of fireworks in the streets is deemed a public nuisance,[216] the licensing of such a nuisance by the city without the authority of a statute renders it liable for a consequent injury to individuals;[217] though merely negatively permitting it does not render it so liable, as a city is not responsible for the action or

of public works, serving gratuitously, for negligence in carrying on the work, by which injury has occurred, it has been held that they were not liable if proper care had been used by them in selecting those who were actually to perform the work: Holliday v. St. Leonards, 11 C. B. (N. S.) 192." See also, Gooch v. Association &c., 109 Mass. 558; Heriot's Hospital v. Ross, 12 Cl. & F. 507.

[215] Tindley v. City of Salem, 137 Mass. 171, where it was held that a city which undertakes the celebration of a holiday (July 4), under the authority of the public statutes, ch. 28, § 13 (which provides that the city council may appropriate money for such a purpose), exclusively for the gratuitous amusement of the public, is not liable to an action by one who sustains personal injuries through the negligence of city servants in discharging fireworks for the purposes of the celebration. After specifying a great number of different cases in some of which cities were required by statute, and in others of which they were only authorized to do certain things, Allen, J., said:—"In all of these cases the duty is imposed or the authority conferred for the general benefit. The motive and the object are the same, though in some instances the legislature determines finally the necessity or expediency, and in others it leaves the necessity or expediency to be determined by the towns themselves. But when determined, and when the service has been entered upon, there is no good reason why a liability to a private action should be imposed when a town voluntarily enters upon such a beneficial work, and withheld when it performs the service under the requirement of an imperative law. . . . It is well known that many towns in Massachusetts, not bound to do so, voluntarily maintain high schools. It is not to be supposed that the legislature have intended to make such towns liable to private actions when towns required to maintain high schools would be exempt. On the other hand, it has been recognized in numerous cases in this state and elsewhere that the question of the liability of towns does not rest upon this distinction: Clark v. Inhabitants &c., 128 Mass. 567; Fisher v. City of Boston, 104 Mass. 87; Hafford v. City of New Bedford, 16 Gray (Mass.) 297; Bigelow v. Inhabitants &c., 14 Gray (Mass.) 541; Eastman v. Meredith, 36 N. H. 284; Wixon v. City of Newport, 13 R. I. 454." See also, Beach Contr. Neg. (2d ed.), §§ 259, 413.

[216] Jenne v. Sutton, 43 N. J. L. 257; Conklin v. Thompson, 29 Barb. (N. Y.) 218.

[217] Speir v. City of Brooklyn, 18 N. Y. S. 170, and cases cited.

non-action of its police, as shown elsewhere.[218] Where a city has no power to provide for a display of fireworks it is not liable for injuries,[219] and is not liable for injury from erecting a scaffold for the display of fireworks where the contractor agreed to be responsible for all personal injuries.[220] A municipality is not liable for an injury caused by the firing of fireworks and firearms on the street by a crowd of citizens, although done with the knowledge and consent of the officers.[221]

§ **802. Liability as to city wells and water.**—A municipal corporation is bound to use reasonable diligence to keep its wells for the gratuitous use of the public in repair,[222] and, on notice that their water is unwholesome, to protect the public health by closing or purifying them; but it is not an insurer of the quality of their water, or liable to a person injured by using it without proof of wilful misconduct or culpable neglect. The city is not bound from time to time to test the purity of such water by a chemical examination.[223] As the powers granted by the acts for supplying New York city with pure

[218] Ante, § 793; Hill v. Board &c., 72 N. C. 55; Borough of Norristown v. Fitzpatrick, 94 Pa. St. 121; Ball v. Town of Woodbine, 61 Iowa 83; s. c. 15 N. W. 846; 47 Am. R. 805; Robinson v. Greenville, 42 Ohio St. 625. In Little v. City of Madison, 49 Wis. 605; s. c. 6 N. W. 249, it was held that a city license to exhibit wild animals, specifying no place for such exhibition, is a license to exhibit in some suitable place, and the fact that the licensee makes the exhibition in a public street, and is permitted to do so by the negligence of city officers, does not render the city liable for injuries resulting therefrom.

[219] Love v. City of Raleigh, 116 N. C. 296; s. c. 21 S. E. 503.

[220] Heidenway v. City of Philadelphia, 168 Pa. St. 72; s. c. 31 Atl. 1063.

[221] Bartlett v. Town of Clarksburg, 45 W. Va. 393; s. c. 31 S. E. 918. It has been held, however, that a city may conduct the display of fireworks: Heidenway v. City of Philadelphia, 168 Pa. St. 72; s. c. 31 Atl. 1063.

[222] McCarthy v. City of Syracuse, 46 N. Y. 194.

[223] Danaher v. City of Brooklyn, 119 N. Y. 241; s. c. 23 N. E. 745, where Earl, J., said:—"The city has its public water-supply by running water in addition to these wells. The wells are furnished and kept for public use by the city. It was undoubtedly the duty of the city to keep the wells and pumps in good order and to keep the wells properly cleaned out so that they would not become contaminated by anything that might be thrown into them. . . . The burden upon the city is sufficient if it be held to the responsibility of keeping the wells and pumps in order and clean, and if it be made liable for any injury resulting from the use of impure waters from the wells after it has had notice of their dangerous qualities and an opportunity to remove the danger. The higher degree of diligence (that is, testing by chemical examination) as to water apparently pure and wholesome, agreeable to the taste and in common use by the public without complaint, would be unreasonable."

water were intended for the private advantage of the city, the city was held liable for the unskilful construction of a Croton river dam by the employes of the water commissioners, who, though appointed by the state, were agents of the city.[224] Doubtless a city may be liable for causing or negligently permitting its sewage and filth to percolate into its wells or other water supply.[225] A city is not liable in damages for so negligently constructing a sewer as to cut off water from the spring of an abutting land-owner, which otherwise would supply the spring by percolation through the soil of the street, because the owner has no absolute right to such percolating water,[226] unless such right has been conferred or damages for interference with it awarded by statute.[227]

§ 803. **Non-liability to trespassers.**—A municipal corporation is not liable to a trespasser who goes, without license or invitation, upon its land, though unmolested, for mere pleasure or to gratify curiosity, and there meets with an injury through the corporation's negligent management of its property; and no distinction is made in favor of

[224] Bailey v. Mayor &c., 3 Hill (N. Y.) 531. The village of Rutland maintains a water-system for the double purpose of furnishing the inhabitants with a supply for private purposes and providing against fire. It was held that as to that portion of the system supplying individuals for hire, the village was liable for any negligence in its construction or maintenance: Wilkins v. Village of Rutland, 61 Vt. 336; s. c. 17 Atl. 735.

[225] Ballard v. Tomlinson, 29 Ch. D. 115; Rex v. Medley, 6 Car. & P. 292; Charles v. Finchley Local Board, 52 L. J. (N. S.) Ch. 554; Brown v. Illius, 27 Conn. 84. In Goldsmid v. Tunbridge Wells Com'rs, L. R. 1 Eq. 161, an injunction was granted to restrain commissioners for draining a town from causing the sewage to be discharged into a stream passing through the plaintiff's land, and feeding a lake there, as the pollution of the water perceptibly increased as new houses contributed their sewage to the stream.

[226] Elster v. City of Springfield, 49 Ohio St. 82; s. c. 30 N. E. 274.

[227] Trowbridge v. Inhabitants &c., 144 Mass. 139; s. c. 10 N. E. 796, where the court said:—"In exercising its rights the town acts, not under the title of the owner, but by virtue of the authority given by the statute, and under the obligation imposed by the statute to pay all damages occasioned thereby. The petitioner had a right to collect and keep the water in her well, and depriving her of it so as to injure her land was a damage to her. It is no answer that other landowners had the same right in respect to their lands, and that, if the petitioner's damages had been in consequence of the exercise of those rights in his land by a landowner, she could not have recovered damages from him. The respondent's rights in the land, and its authority to do the act which caused the damage, are given by the same statute which gives a remedy to the petitioner to recover damages." See also, Watuppa Reservoir v. City of Fall River, 134 Mass. 267.

an infant child so receiving an injury.[228] In such a case the municipality owes no special duty to a child straying from its parents, and the duty of protecting it is not shifted from its parents to the municipality because it chances to escape from their care.[229] This is the general rule applicable to those who trespass on private lands, and there is no reason why municipal corporations should not have the benefit of it;[230] but of course it has no application to public highways, where all have a right to be, nor can it be invoked by a city which is itself either directly or indirectly a trespasser upon such highways.[232]

§ **804. Liability for nuisances.**—A municipal corporation must not use its property in such a manner as to injure the property of others, and, unless authorized by statute, can not justify a trespass or nuisance on the ground that it is acting for the public benefit,[233] for in general

[228] Clark v. Manchester, 62 N. H. 577, where the court said that "the owner of land, for whatever purpose it may be used, is under no obligation to keep his premises in a safe condition for the prevention of injury to trespassers and persons intruding without license or invitation express or implied." See also, Severy v. Nickerson Co., 120 Mass. 306; Hargreaves v. Deacon, 25 Mich. 1; Beach Contr. Neg. (2d ed.), § 50.

[229] Gillespie v. McGowan, 100 Pa. St. 144.

[230] Beck v. Carter, 68 N. Y. 283; Pierce v. Whitcomb, 48 Vt. 127. See also, Barrett v. Black, 56 Maine 498; Carleton v. Franconia &c. Steel Co., 99 Mass. 216.

[232] Tobin v. Portland &c. R. Co., 59 Maine 183, 188. See also, Beach Contr. Neg. (2d ed.), § 256.

[233] Thus in Miles v. City of Worcester, 154 Mass. 511; s. c. 28 N. E. 676, which was an action in tort for damages occasioned by the encroachment on plaintiff's land of a wall built by the city in adapting a lot of land to schoolhouse purposes. The continuance of the wall on plaintiff's land was held to be a nuisance for which the city was responsible. Allen, J., said:—"The defendant suggests that it is not liable because the wall was built and maintained solely for the public use and under the requirement of general laws; and that the case can not be distinguished in principle from the line of cases beginning with Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332, and ending with Howard v. City of Worcester, 153 Mass. 426; s. c. 27 N. E. 11. We are not aware, however, that a private nuisance to property can be justified or excused on that ground. The verdict shows a continuous occupation of the plaintiff's land by the encroachment of defendant's wall. The question of negligence in the building of the wall is not material. The erection was completed and was accepted by the defendant, and is now in the defendant's sole charge, and if it is a nuisance the defendant is responsible. . . . The public use and the general benefit will not justify such a nuisance to the property of another." The rule of liability for nuisances and for the invasion of property was thus laid down in Eastman v. Meredith, 36 N. H. 284, 295:—"Towns and other municipal corporations, including counties in this state, have power, for certain purposes, to hold and manage property, real and personal;

it has no more right than a natural person to create or maintain a nuisance.[234] A city which acquires land on which a nuisance exists becomes liable to others injured by its continuance if it suffers the nuisance to continue after notice of its existence and a request to remove it.[235] Generally the city is liable for creating and maintaining a nuisance.[236] The city is not liable for destruction or loss of property occasioned by abating a nuisance, since the exercise of such power is governmental and discretionary.[237] A person appointed by the mayor as special policeman to keep a street free of obstructions

and for private injuries caused by the improper management of their property, as such, they have been held to the general liability of private corporations and natural persons that own and manage the same kind of property: Bailey v. Mayor &c., 3 Hill (N. Y.) 531, 541. . . . So if a town or city maintain an erection or structure which is a private nuisance, and causes a special damage, or in the performance of an authorized act invade any right of property, the corporation has been held liable to a civil action: Thayer v. City of Boston, 19 Pick. (Mass.) 511; Town Council v. McComb, 18 Ohio 229; Rhodes v. City of Cleveland, 10 Ohio 159."

[234] Harper v. City of Milwaukee, 30 Wis. 365; Young v. Leedom, 67 Pa. St. 351; Pittsburg City v. Grier, 22 Pa. St. 54; Delmonico v. New York, 1 Sandf. (N. Y.) 222. A city which lets for hire a building erected for municipal purposes is liable for an injury caused by a defect or want of repair in the building or for negligence of its agents in the management of the building in the same manner as a private owner would be: Worden v. City of New Bedford, 131 Mass. 23. In Noonan v. City of Albany, 79 N. Y. 470, Andrews, J., said:—"A municipal corporation has no greater right than an individual to collect the surface-water from its lands or streets into an artificial channel and discharge it upon the lands of another, nor has it any immunity from legal responsibility for erecting or maintaining nuisances." See also, Byrnes v. City of Cohoes, 67 N. Y. 204. The negligent construction of a gutter by a municipality, or its negligent failure to keep the same in repair, caused surface water to flood a lot upon which it would not otherwise have flowed. It was held that the municipality was liable for the consequent damages, although such lot was below the grade of the street: Gilluly v. City of Madison, 63 Wis. 518; s. c. 24 N. W. 137; 53 Am. R. 299.

[235] Nichols v. City of Boston, 98 Mass. 39; McDonough v. Gilman, 3 Allen (Mass.) 264. And after acceptance of an unsafe party wall built by another, a city would probably be liable to the adjoining owner for an injury caused by its fall: Gorham v. Gross, 125 Mass. 232. And see Khron v. Brock, 144 Mass. 516; s. c. 11 N. E. 748; Bryant v. Town of Randolph, 14 N. Y. S. 844. A city empowered, for sewerage purposes, to change, widen and deepen the channel of a brook, may be liable for so performing the work as to create an unnecessary nuisance: Morse v. City of Worcester, 139 Mass. 389; s. c. 2 N. E. 694.

[236] Bolton v. Village of New Rochelle, 32 N. Y. S. 442; s. c. 84 Hun (N. Y.) 281.

[237] Wood v. City of Hinton, 47 W. Va. 645; s. c. 35 S. E. 824.

does not himself become a nuisance and an obstruction to the street which will render the city liable.[238] A city is liable for a nuisance for the time it continued, even though abated by the city.[239] Animals running at large in a city are a nuisance, which it is the duty of the city to suppress.[240]

§ **805. Municipal liability in general.**—Corporations in general are liable to actions for torts as individuals are,[241] and this rule is applicable to municipal corporations for torts committed under their authority.[242] A municipal corporation is liable for injuries to individuals resulting from any neglect or omission of duty in keeping its streets in reasonably safe condition for use in the usual mode. And this is the rule in England, even where the duty is not expressly imposed by statute.[243]

§ **806. Chartered cities, etc., distinguished from counties, etc.—The conflict.**—In many of the states a distinction is made between the

[238] Craig v. City of Charleston, 78 Ill. App. 312; s. c. affirmed 180 Ill. 154; s. c. 54 N. E. 184.

[239] City of New Albany v. Slider, 21 Ind. App. 392; s. c. 52 N. E. 626.

[240] Cochrane v. City of Frostburg, 81 Md. 54; s. c. 31 Atl. 703.

[241] In Reed v. Home Savings Bank, 130 Mass. 443, the court said:—"It is too late to discuss the question whether a corporation can commit a trespass or is liable to an action on the case or subject generally to actions for torts as individuals are. The reports for a quarter of a century show that a large proportion of actions of this nature both for nonfeasance and misfeasance are against corporations. By the great weight of modern authority a corporation may be liable, even where a fraudulent or malicious intent is necessary to be proved, the fraud or malice of its authorized agents being imputable to the corporation, as in actions for fraudulent representations, for libel or for malicious prosecution."

[242] Salt Lake City v. Hollister, 118 U. S. 256; s. c. 6 S. Ct. 1055.

[243] Clemence v. City of Auburn, 66 N. Y. 334; Diveny v. City of Elmira, 51 N. Y. 506; Hines v. City of Lockport, 50 N. Y. 236; Barton v. City of Syracuse, 36 N. Y. 54; Conrad v. Trustees &c., 16 N. Y. 159; Hutson v. Mayor &c., 9 N. Y. 163. See § 806, post. In Borough &c. of Bathurst v. MacPherson, 4 App. Cas. 256, defendants were held liable for neglect to repair a barrel drain which they had made, and the sole control and management of which had been vested in them by statute; following Hartnall v. Ryde Com'rs, 4 B. & S. 361. "In their lordships' opinion no substantial distinction can be taken between that case and the present, in which the duty for the reasons above stated had been found to exist though not expressly imposed by statute." In Blackmore v. Vestry &c., 9 Q. B. D. 451, the defendants as the body authorized by statute to water the streets were held liable for the slippery condition of an iron flap which they had placed in the street, though they might not have been liable as highway surveyors. See also, White v. Hindley Local Board &c., L. R. 10 Q. B. 219.

liability of such purely municipal corporations as chartered towns, cities and villages, and the non-liability of counties and towns as political divisions of the state, and the former are held quite strictly to the performance of their duties and responsible in damages for neglecting them.[244] If the charter granted to a city or town at its request enables it to derive benefit in its corporate capacity in the way of rent or tolls from the public works it is required to construct, it is deemed reasonable it should be liable as other corporations are for any injury caused by its negligence.[245] But in Arkansas and

[244] Thus in Board &c. v. Mighels, 7 Ohio St. 109, the court says:—"A municipal corporation proper is created mainly for the interest, advantage and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large." In Edwards v. Town of Pocahontas, 47 Fed. 268, the court says:—"The distinction between the liability of a municipal corporation called into existence either at the direct solicitation or by the free consent of the persons composing it for the promotion of their own local and private advantage and convenience, and that of counties or other political divisions of a state, established by general laws, for the negligent conduct of their officers and agents, is clearly defined. The principle upon which the distinction rests is that counties are arbitrary political divisions of a state, and the governmental powers they exercise are imposed upon them by general laws, while municipal corporations act voluntarily in their assumption of a part of the sovereignty of the state in their exercise of self-government,"—citing also, Cooley Const. Lim. (3d ed.) 247, 248. See also, Oliver v. City of Worcester, 102 Mass. 489; City of Galveston v. Posnainsky, 62 Tex. 118, and cases cited. In Barnes v. District of Columbia, 91 U. S. 540, the district was held to be liable to an individual who fell into an excavation caused by a change of grade in the city of Washington, which the district permitted a certain railroad to make. The district as a chartered municipal corporation had acted by a board of public works appointed under the charter or act of congress by the president and confirmed by the senate. Hunt, J., speaking for the majority of the court, said:—"The powers given to this board are not of a character belonging to independent officers, but rather those which indicate that it is the representative of the municipal corporation. Notwithstanding these features, and that we find this power given by the act which creates the municipality, and that this is one of the powers ordinarily belonging to a municipal government, and though the manner of its bestowal and the selection of the agents who exercise it are similar to that of the other appointees and agents of the municipal corporation, it is still contended that no liability exists on the part of the corporation to compensate the plaintiff for his injuries. . . . The authorities establishing the contrary doctrine that a city is responsible for its mere negligence are so numerous and so well considered that the law must be deemed to be settled in accordance with them."

[245] Oliver v. City of Worcester, 102 Mass. 489, 500; Weet v. Trustees &c., 16 N. Y. 161, n.; Nebraska City v. Campbell, 2 Black 590; Weightman v. Washington, 1 Black 39.

California this distinction is not observed, and incorporated cities are held to no stricter liability than counties, unless such liability is imposed by statute.[246] Nor is the distinction before adverted to recognized in South Carolina,[247] nor in Michigan,[248] nor in New Jersey,[249] nor in Massachusetts, Maine and Connecticut, in respect to highways.[250]

§ 807. **Municipal liability in exercise of private powers.**—In the exercise of its private powers a municipality is liable for torts to the same extent as a private corporation.[251] These private powers relate,

[246] Thus in Arkadelphia v. Windham, 49 Ark. 139; s. c. 4 S. W. 450, the court said:—"We think the streets of a town or city like all other roads are public highways; that the duty of keeping them in repair is to the public, not to private individuals; and no civil action arises from an injury resulting from a neglect to keep them in repair. In the absence of a statute there is no difference between the liability of an incorporated town or city and a county in such cases. Such a distinction would be contrary to every principle of fairness, reason and justice." In California cities are deemed like counties mere instruments of the government and not liable for injuries sustained by individuals through neglect of city officers to keep the streets in repair: Winbigler v. Mayor &c., 45 Cal. 36, where the decisions in Hoffman v. San Joaquin Co., 21 Cal. 426, and Crowell v. Sonoma Co., 25 Cal. 313, were followed.

[247] Young v. City Council &c., 20 S. C. 116.

[248] City of Detroit v. Backeby, 21 Mich. 84; McCutcheon v. Ammon Council &c., 43 Mich. 483; s. c. 5 N. W. 668; City of Detroit v. Putnam, 45 Mich. 263; s. c. 7 N. W. 815.

[249] Pray v. Mayor &c., 32 N. J. L. 394; Board &c. v. Strader, 18 N. J. L. 108; Callahan v. Inhabitants &c., 30 N. J. L. 160; Livermore v. Board &c., 31 N. J. L. 508.

[250] French v. City of Boston, 129 Mass. 592; s. c. 37 Am. R. 393; Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332. In the last case Gray, C. J., said:—"In this commonwealth an act of the legislature changing a town into a city has never been considered as enlarging civil remedies for neglect of corporate duties; and it has constantly been held that a city like a town is not liable to an action for a defect in a highway, except so far as the right to maintain such an action has been given clearly by statute: Brady v. City of Lowell, 3 Cush. (Mass.) 121; Harwood v. City of Lowell, 4 Cush. (Mass.) 310; Hixon v. City of Lowell, 13 Gray (Mass.) 59; Oliver v. City of Worcester, 102 Mass. 489. The same view has been taken in other New England states and in New Jersey, Michigan and California: Morgan v. City of Hollowell, 57 Maine 375; Jones v. City of New Haven, 34 Conn. 1, 13; Hewison v. City of New Haven, 37 Conn. 475."

[251] Maxmilian v. Mayor &c., 62 N. Y. 160, 164. "There are two kinds of duties imposed on a municipal corporation: one is of that kind which arises from the grant of a special power in the exercise of which the municipality is as a legal individual; the other is of that kind which arises or is implied from the use of political rights under the general law, in the exercise of which it is as a sovereign. . . . In the

for example, to the corporate property of a city held and managed by it for its own immediate profit, though ultimately inuring to the public benefit.[252] In New Hampshire where a city had ceased to use a reservoir for the public purpose of extinguishing fires, and was filling it up in order to use it for a private purpose, it was held to be liable as an individual would be.[253] Under a charter requiring a city "to preserve peace and good order, securing persons and property from violence, danger or destruction," it is not enough to pass an ordinance against "coasting" on the streets, but the city must also use reasonable care and diligence to enforce it;[254] but in Indiana a city is not liable for failing to enforce its ordinances against coasting.[255] Where a town does work voluntarily as a private enterprise, and not under the compulsion of a statute, when it might have left it to a railroad company as a duty which the company had assumed, it will be liable for an injury to an employe.[256] A city is liable only in tort for wrong-

exercise of the former power, and under the duty to the public which the acceptance and use of the power involves, a municipality is like a private corporation and is liable for a failure to use its power well, or for an injury caused by using it badly." In Smith v. City of Rochester, 76 N. Y. 506, Miller, J., says:—"The doctrine is well settled that municipal corporations are within the operation of the general rule of law that the superior or employer must answer civilly for the negligence of an agent or servant in the course of their employment by which another is injured."

[252] In Oliver v. City of Worcester, 102 Mass. 489, Gray, J., thus speaks of the private powers of a city as distinguished from their public duties:—"The distinction is well established between the responsibilities of towns and cities for acts done in their public capacity, and for acts done in what may be called their private character in the management of property or rights voluntarily held by them for their own immediate profit or advantage as a corporation, although inuring of course ultimately to the benefit of the public."

[253] Clark v. Manchester, 62 N. H. 577.

[254] Taylor v. Mayor &c., 64 Md. 68; s. c. 20 Atl. 1027.

[255] City of Lafayette v. Timberlake, 88 Ind. 330, where Elliott, J., says:—"A conclusion which would make a city liable for the acts of coasters can only be reached by assuming that municipal corporations are liable for a failure to execute the statutes of the state or the ordinances of the corporation, and this assumption can not be made unless settled principles are disregarded. . . . Making and enforcing ordinances regulating the use of streets brings into exercise governmental, and not corporate, powers, and the authorities are well agreed that for a failure to exercise legislative, judicial or executive powers of government, there is no liability." See also, § 813, post.

[256] Collins v. Inhabitants &c., 172 Mass. 78; s. c. 51 N. E. 454; Dean v. Randolph, 132 Mass. 475; Sullivan v. Holyoke, 135 Mass. 273; Waldron v. Haverhill, 143 Mass. 582; s. c. 10 N. E. 481; Neff v. Inhabitants &c., 148 Mass. 487; s. c. 20 N. E. 111.

fully withholding water for irrigation where it has voluntarily agreed to furnish it.[257] Where a town engages in a private enterprise under the charge of a public officer, and which it is not compelled by law to do, it will be liable for negligence, and it is immaterial whether the enterprise prove profitable or not.[258] And so where a city holds land as a private owner the same duties devolve upon it so far as nuisances are concerned as are applied to individuals.[259]

§ 808. **Liability commensurate with duty.**—The liability of a city, town or township in respect to public roads or highways is commensurate with the duty enjoined by law, and therefore in each case the inquiry is as to the extent of such duty.[260] Where there is no duty there is no liability.[261] The terms "duty," "diligence," "vigilance" and "negligence" are relative. There is no negligence in failing to guard against a very unlikely possibility. Thus a highway running through a sparsely settled town does not require the same attention as a thronged thoroughfare in a populous city;[262] and in a city it is not negligence not to guard against an accident which could not be expected or foreseen.[263] A power conferred on city authorities to superintend or repair the streets imposes the duty to exercise the power when necessary.[264] Thus a town or township charged with the care of a bridge is liable for injury caused by leaving its abutments unguarded.[265] The District of Columbia is liable for injuries arising

[257] City of Ysleta v. Babbitt, 8 Tex. Civ. App. 432; s. c. 28 S. W. 702.

[258] Collins v. Inhabitants &c., 172 Mass. 78; s. c. 51 N. E. 454.

[259] City of Pekin v. McMahon, 154 Ill. 141; s. c. 39 N. E. 484. Cf. Mackey v. City of Vicksburg, 64 Miss. 777; s. c. 2 So. 178; Clark v. Manchester, 62 N. H. 577.

[260] Plymouth Tp. v. Graver, 125 Pa. St. 24; s. c. 17 Atl. 249.

[261] Monk v. Town of New Utrecht, 104 N. Y. 552; s. c. 11 N. E. 268.

[262] Glasier v. Town of Hebron, 131 N. Y. 447; s. c. 30 N. E. 239.

[263] Hubbell v. City of Yonkers, 104 N. Y. 434; s. c. 10 N. E. 858.

[264] Requa v. City of Rochester, 45 N. Y. 129; Hutson v. New York, 9 N. Y. 163; New York v. Furze, 3 Hill (N. Y.) 612. As Earl, C. J., said in People v. Meakim, 133 N. Y. 214, 220; s. c. 30 N. E. 828:—"It is not expressly provided in the statute that they shall proceed and make a determination of the matter within any particular time; and, indeed, there is no express provision that they shall make any determination whatever. But that they shall is necessarily implied in the statute; and what is necessarily implied is as much a part of the statute as if it were specially written therein."

[265] Dalton v. Upper Tyrone Tp., 137 Pa. St. 18; s. c. 20 Atl. 637; Corbalis v. Newberry Tp., 132 Pa. St. 9; s. c. 19 Atl. 44; Plymouth Tp. v. Graver, 125 Pa. St. 24; s. c. 17 Atl. 249. A town is liable for allowing a highway at a railroad crossing to remain for years in a dangerous condition, though it was at first rendered dangerous by the railroad company: Bryant v. Town of Randolph, 14 N. Y. S. 844. In Plymouth Tp. v. Gra-

from neglect of its streets in the city of Washington.[266] In Michigan a city is not liable for failure to keep its sidewalks in repair;[267] but in Ohio a city is so liable, and is not relieved from such liability by giving a permit to individuals to occupy the streets under conditions.[268]

§ 809. **Municipal liability as to water-front.**—The state may impose a public duty upon a particular county or city upon the assumption of its being more beneficially interested therein than other portions of the state;[269] for example, may require it to keep the waters along its front in a navigable condition; but such a duty does not exist at common law in this country,[270] except where the city is in control of and receives a revenue from wharves.[271] But a city is liable in damages for obstructing navigable waters by discharging the dirt from its sewers into them, to the individual thereby peculiarly injured.[272]

§ 810. **Liability for fright of horses.**—Where a horse attached to a cart was frightened by a hole negligently left by a city in a pier belonging to it, and backed against a rotten string-piece which broke, and the horse and cart were lost, the city was held to be liable in the absence of proof that the horse was vicious or unusually excitable,[273] though the result might have been different if the place had not been exposed and dangerous.[274] The Massachusetts rule is that if a horse, while uncontrollable by reason of fright, disease or viciousness, comes upon a defect in a highway, the town is not liable for the injury un-

ver, 125 Pa. St. 24; s. c. 17 Atl. 249, it was held that "whether the danger arises from an imperfection in the road itself, or from an excavation in it outside the traveled route, or from the existence of a declivity or stream of water at the roadside, or from a railroad upon which locomotives and trains of cars are accustomed to pass, if there is a concurrence of circumstances which render the road a place of peril to the traveler, the township is held to do whatever is reasonable and practicable to avert the danger which threatens."

[266] District of Columbia v. Woodbury, 136 U. S. 450; s. c. 10 S. Ct. 990.

[267] Detroit v. Osborne, 135 U. S. 492; s. c. 10 S. Ct. 1012.

[268] City of Cleveland v. King, 132 U. S. 295; s. c. 10 S. Ct. 90.

[269] Mobile Co. v. Kimball, 102 U. S. 691; Winpenny v. Philadelphia, 65 Pa. St. 135.

[270] Winpenny v. Philadelphia, 65 Pa. St. 135; Coonley v. City of Albany, 132 N. Y. 145; s. c. 30 N. E. 382.

[271] Pittsburg v. Grier, 22 Pa. St. 54.

[272] Brayton v. City of Fall River, 113 Mass. 218; Haskell v. New Bedford, 108 Mass. 208; Boston Rolling Mills v. City of Cambridge, 117 Mass. 396; Franklin Wharf Co. v. City of Portland, 67 Maine 46; Emory v. City of Lowell, 104 Mass. 13; Gerrish v. Brown, 51 Maine 256.

[273] Macauley v. Mayor &c., 67 N. Y. 602.

[274] Hubbell v. City of Yonkers, 104 N. Y. 434; s. c. 10 N. E. 858.

less it would have occurred if the horse had not been uncontrollable; but a horse which merely shies is not considered uncontrollable.[275] It is certainly reasonable that a city should be held not liable for an injury caused by a frightened horse on its streets, where the city was not the cause of the fright.[276]

§ 811. **Municipal liability for acts of officers and agents.**—A municipal corporation is not liable for the acts of its officers and agents unless previously authorized or subsequently ratified by it, or unless done in good faith in pursuance of a general authority to act for it in the matter to which they relate.[277] So a city is not liable to an action by one whose property has been wrongfully seized by a tax collector without authority of law, where the city has neither authorized nor ratified the act; and it is not a ratification to receive the money in ignorance of the tort, nor is authority conferred by a resolution to hold the collector harmless if he proceeds according to law.[278] A com-

[275] Titus v. Inhabitants &c., 97 Mass. 258; Horton v. City of Taunton, 97 Mass. 266; Fogg v. Inhabitants &c., 98 Mass. 578. See also, Beach Contr. Neg. (4th ed.), § 245, and numerous cases there cited.

[276] Cole v. City of Newburyport, 129 Mass. 594. Where plaintiff was injured by a horse running away through fright occasioned by the employes of the city fire department the city is not liable since the employes were public officers engaged in a public duty: Saunders v. City of Ft. Madison, 111 Iowa 102; s. c. 82 N. W. 428.

[277] Thus in Horton v. Newell, 17 R. I. 571; s. c. 23 Atl. 910, which was an action of trespass on the case against the city treasurer of the city of Pawtucket for a malicious suit against the plaintiff brought by the city tax collector, the demurrer was sustained on the following grounds stated by the court:—"The declaration does not allege that the city of Pawtucket authorized the suit by Newell in his capacity as tax collector, complained of as malicious, or that it has ratified such suit. If it was maliciously brought by Newell it was not brought in good faith, which is essential to render the city liable as for an act done in pursuance of a general authority to act for it under the rule stated above." See also, Donnelly v. Tripp, 12 R. I. 97, where the city council of Providence having directed the highway commissioners to cut down a certain street, provided the adjoining owners agreed not to make a claim for damages, and by inadvertence the cutting down was done without such agreement by the owners, it was held that the city was not liable. See Mulcairns v. City of Janesville, 67 Wis. 24; s. c. 29 N. W. 565.

[278] Everson v. City of Syracuse, 100 N. Y. 577; s. c. 3 N. E. 784. So in Wallace v. City of Menasha, 48 Wis. 79; s. c. 4 N. W. 101, the city was held not to be liable for the act of its treasurer in seizing and selling the chattels of one person for the delinquent taxes of another. In Buffalo &c. Co. v. City of Buffalo, 58 N. Y. 639, the city was held liable because it authorized the acts complained of through its common council, but that it was immaterial whether the acts of the common council were to be regarded as those

plaint in an action of tort against a municipality is demurrable unless it shows that the wrongful act was not done by an independent officer and was done by an officer while in the performance of some duty of a corporate nature.[279]

§ 812. **Not liable for ultra vires acts of officers, etc.**—A municipal corporation is not liable for the negligence of its agent or servant in the course of his employment unless the act complained of was within the scope of the corporate powers.[280]

§ 813. **Non-liability in the exercise of discretionary powers.**—A municipal corporation is not liable for the neglect to exercise a power or perform a duty which is discretionary or judicial in its character. This rule has been applied where a city failed to provide sufficient drainage of an individual's premises.[281] The same rule is applied

of defendants or as those of its agents. It was liable, the tortious acts being in the course of the agency: Lee v. Village of Sandy Hill, 40 N. Y. 442.

[279] A municipal corporation is not generally liable for the wrongful act of an officer, and in order to hold it liable it must be made to appear that such officer was not an independent public officer, and that the wrong complained of was done by such officer while in the legitimate exercise of some duty of a corporate nature, which was devolved upon him by law or by the direction of the corporation: Caspary v. City of Portland, 19 Or. 496; s. c. 24 Pac. 1036.

[280] Smith v. City of Rochester, 76 N. Y. 506, where one of the defendant's hose carts, while carelessly driven on the street in celebrating the centennial anniversary, ran over plaintiff; it was held that as the calling out the hose cart for such a purpose was not authorized the city was not liable, and that the fact of the city owning the cart and horses did not make it responsible for the negligence of its servants having control of them and when using them in a service not of a public nature and not authorized by law. Miller, J., said:—"If the corporation had power to order the driver of the hose cart, it could only do so in accordance with the statute granting such power, and if it had no such power, the order was clearly void, and the corporation was not liable for the consequences arising from its being carried into effect." See also, the similar case of Morrison v. City of Lawrence, 98 Mass. 219, where the city was held not to be liable for the negligent firing of a rocket by its servant under a defective resolution authorizing the celebration of the Fourth of July. See also, the general rule as expressed by Shaw, C. J., in Thayer v. City of Boston, 19 Pick. (Mass.) 511.

[281] Mills v. City of Brooklyn, 32 N. Y. 489, where Denio, C. J., said:—"It is not the law that a municipal corporation is responsible in a private action for not providing sufficient sewerage for every or any part of the city or village. The duty of draining the streets is one requiring the exercise of deliberation, judgment and discretion. . . . It admits of a choice of means, and the determining of the order of time in which improvements shall be made. It involves also a variety of prudential considerations relating to the burdens which may be discreetly im-

where the manufacture and sale of fireworks within city limits is left to the legislative authority of the common council.[282] In Indiana it is held that a municipal corporation is not liable, either for a failure to exercise or a negligent exercise of legislative or judicial powers.[283] In other words, the general rule is that a municipal corporation is liable only for omission or negligence in respect to its ministerial duties.[284]

posed at a given time and the preference which one locality may claim over another." See also, Wilson v. Mayor &c., 1 Denio (N. Y.) 595; Cole v. Trustees &c., 27 Barb. (N. Y.) 218; Kavanagh v. City of Brooklyn, 38 Barb. (N. Y.) 232; Radcliff v. Mayor &c., 4 N. Y. 195. In Edgerly v. Concord, 62 N. H. 8, the city was held not liable to a traveler for an injury caused by his horse taking fright at a stream of water thrown from a hydrant by firemen testing its capacity in the presence of the mayor and city council, who are engaged in determining the most suitable location for the erection of an engine-house for a steam fire-engine. Allen, J., said:—"As a part of the governmental machinery of the state, municipal corporations legislate and provide for the customary local conveniences of the people, and in exercising these discretionary functions the corporations are not called upon to respond in damages to individuals, either for omissions to act, or for the mode of exercising powers, and to be exercised at discretion for the public good. For injuries arising from the corporation's failure to exercise its public legislative and police powers and from the manner of executing those powers, there is no remedy against the municipality, nor can an action be maintained for damages resulting from the failure of its officers to discharge properly and effectually their official duties;" citing Eastman v. Meredith, 36 N. H. 284; Ray v. City of Manchester, 46 N. H. 59, 60; Hardy v. Keene, 52 N. H. 370, 377; Thayer v. City of Boston, 19 Pick. (Mass.) 511; Hafford v. City of New Bedford, 16 Gray (Mass.) 297; Fisher v. City of Boston, 104 Mass. 87; Hill v. City of Boston, 122 Mass. 344; s. c. 23 Am. R. 332; Barbour v. City of Ellsworth, 67 Maine 294; Judge v. City of Meriden, 38 Conn. 90; Jewett v. City of New Haven, 38 Conn. 368; s. c. 9 Am. R. 382; Hutchinson v. Town of Concord, 41 Vt. 271; Grant v. City of Erie, 69 Pa. St. 420; Davis v. City Council &c., 51 Ala. 139.

[282] McDade v. City of Chester, 117 Pa. St. 414; s. c. 12 Atl. 421. See also, Lehigh Co. v. Hoffort, 116 Pa. St. 119; s. c. 9 Atl. 177; Carr v. Northern Liberties, 35 Pa. St. 324; Corporation &c. of Easton v. Neff, 102 Pa. St. 474.

[283] City of Anderson v. East, 117 Ind. 126; s. c. 19 N. E. 726; Wheeler v. City of Plymouth, 116 Ind. 158; s. c. 18 N. E. 532; Dooley v. Town of Sullivan, 112 Ind. 451; s. c. 14 N. E. 566; City of Terre Haute v. Hudnut, 112 Ind. 542; s. c. 13 N. E. 686; Faulkner v. City of Aurora, 85 Ind. 130; City of Lafayette v. Timberlake, 88 Ind. 330.

[284] Agnew v. City of Corunna, 55 Mich. 428; s. c. 21 N. W. 873; McArthur v. City of Saginaw, 58 Mich. 357, 359; s. c. 25 N. W. 313; Kiley v. City of Kansas, 87 Mo. 103; Hubbell v. City of Viroqua, 67 Wis. 343; s. c. 30 N. W. 847; Robinson v. Greenville, 42 Ohio St. 625; Hines v. City of Charlotte, 72 Mich. 278; s. c. 40 N. W. 333; Hitchins v. Mayor &c., 68 Md. 100; s. c. 11 Atl. 826.

§ 814. The same subject continued—New York and Georgia rule.—The rule laid down in the preceding section has been consistently applied in New York, where a power to pass ordinances for the razing or demolishing of public buildings which by reason of fire might become dangerous being deemed to be one of local legislation, it was held that the failure to exercise it did not make a city liable for a death caused by the fall of a dangerous wall.[285] A city is not liable for the failure of its common council, in the exercise of its discretionary power, to pass and enforce a necessary resolution, where such failure involves an error of judgment.[286] A city is not liable for its neglect to exercise its quasi-judicial and discretionary power of improving a sidewalk which is strongly constructed and in good repair but defective in its plan by its slope being too great.[287]

§ 815. The same subject continued—Drainage.—The duties of municipal authorities in adopting a general plan of drainage and determining when and where sewers shall be built, of what size and at what level, being of a quasi-judicial character, as involving the exercise of a large discretion and considerations of public health and convenience, are not subject to revision by court and jury in a private action for not sufficiently draining a particular lot of land.[288] But the construction and repair of sewers, after the adoption of the general plan, are ministerial duties, for the negligent performance of which the municipality which has constructed and owns them may be liable to a person whose property is thereby injured.[289] And a city may

[285] Cain v. City of Syracuse, 95 N. Y. 83. In Georgia it is held there is no sound distinction as to such liability between a failure to pass an ordinance in the first instance and its repeal or suppression. Thus where a city council passed an ordinance forbidding the running of cattle at large in the streets, but subsequently suspended its operation indefinitely on the ground that the growth of weeds and grass was too luxuriant for comfort, health and good appearance, one who was gored by a cow running at large in the streets was held not to have a cause of action against the city: Rivers v. City Council &c., 65 Ga. 376. See also, Forsyth v. Mayor &c., 45 Ga. 152; Duke v. Mayor &c., 20 Ga. 635.

[286] Cain v. City of Syracuse, 95 N. Y. 83. See also, Conrad v. Trustees &c., 16 N. Y. 158; McCarthy v. City of Syracuse, 46 N. Y. 194; Saulsbury v. Village of Ithaca, 94 N. Y. 27; People v. Corporation &c. of Albany, 11 Wend. (N. Y.) 539.

[287] Urquhart v. Ogdensburg, 91 N. Y. 67; Hines v. City of Lockport, 50 N. Y. 236.

[288] Johnston v. District of Columbia, 118 U. S. 19; s. c. 6 S. Ct. 923; Mills v. City of Brooklyn, 32 N. Y. 489; Wilson v. Mayor &c., 1 Denio (N. Y.) 595; Child v. City of Boston, 4 Allen (Mass.) 41.

[289] Barton v. City of Syracuse, 36 N. Y. 54. While a municipal corporation may not be liable for damage sustained from its neglect to provide

be liable by virtue of a special contract to pay any damages caused by the construction of a sewer.[290] A city is liable in case for the damage caused an individual land-owner by discharging a public sewer upon his land and into his mill-pond, where the right to do so has not been acquired in some way known to the law.[291] A city is not liable for damage incurred by reason of the gutters being insufficient on an extraordinary occasion.[292]

§ 816. **Non-liability for errors of judgment.**—A municipal corporation having limited legislative powers delegated by the state is not liable to individuals for losses subsequent on its having misconstrued the extent of its powers,[293] or for error of judgment in the exercise of such powers resulting in an ordinance which is unconstitutional.[294] In the federal case just cited the action of the city in adopting the ordinance in question was a legislative act and the exercise of a right of sovereignty primarily belonging to the state but delegated to the city, and the United States circuit court held that for errors of judgment in the exercise of such powers cities are not liable in their corporate capacity. Where acts done are beyond the authority and power of the city to do, it is not responsible for damages resulting from work done negligently or otherwise, under the supposed authority of illegal

a sewer, it is liable if it provides one so inadequate that it overflows and discharges sewage on the land of an individual. Payment by such person of an assessment for the construction is not an assent to the discharge on his land: Seifert v. City of Brooklyn, 15 Abb. N. C. (N. Y.) 97; Van Rensselaer v. City of Albany, 15 Abb. N. C. (N. Y.) 457. Where a city utilized a stream as a common sewer for more than twenty years, repairing it, arching it, etc., it was held liable for injuries sustained from its neglect to keep the sewer in repair: Kranz v. Mayor &c., 64 Md. 491; s. c. 2 Atl. 908.

[290] A city with power to construct a sewer is liable to the owner of property injured by the negligent manner in which a contractor conducted the work, where the city contracted with the owner of the property for a right of way, and agreed to pay all damages occasioned by the construction: Leeds v. City of Richmond, 102 Ind. 372; s. c. 1 N. E. 711.

[291] Vale Mills v. Nashua, 63 N. H. 136.

[292] Wright v. City of Wilmington, 92 N. C. 156.

[293] The common council of Alexandria granted a license to carry on the business of auctioneer which was ultra vires. The town was held not responsible for losses sustained by individuals from the frauds of the auctioneer: Fowle v. Common Council &c., 3 Pet. 398.

[294] One who has served out in prison a fine imposed for the violation of an unconstitutional municipal ordinance has no right of action against the city for false imprisonment: Trescott v. City of Waterloo, 26 Fed. 592. See also, Duke v. Mayor &c., 20 Ga. 635; Ogg v. City of Lansing, 35 Iowa 495.

and void votes of the city council,[295] but the liability, if any, rests upon the individuals who performed those acts.[296]

§ 817. **Liability for trespass.**—The state itself can not intrude upon private property without the authority of a statute, and a municipal corporation, though acting for and under contract with the state, can not justify a trespass on private land on the ground that such trespass is necessary to the performance of the contract.[297] Though, if an act be done under authority of law, and in a proper manner, a municipal corporation is not liable for consequential damages to the property not invaded by it,[298] yet if it have no statutory right

[295] Cavanagh v. City of Boston, 139 Mass. 426; s. c. 1 N. E. 834; Spring v. Inhabitants &c., 137 Mass. 554; Lemon v. City of Newton, 134 Mass. 476; Cushing v. Inhabitants &c., 125 Mass. 526.

[296] Brigham v. Edmunds, 7 Gray (Mass.) 359. See also, Baker v. City of Boston, 12 Pick. (Mass.) 184, 194.

[297] In St. Peter v. Denison, 58 N. Y. 416, it was held that the casting of stone and earth by blasting from the bed of the canal upon the land of an adjoining owner by a contractor with the state engaged in the work of the Erie canal enlargement was a trespass, and although the work was done without negligence he was liable for the resulting damage. Folger, J., said:—"The state could not intrude upon the lawful possession of a citizen, save in accordance with law. Unless authorized by law so to do, the casting of stone from the bed of the canal upon the adjoining land either by the state or an individual was a trespass: Hay v. Cohoes Co., 2 N. Y. 159. The defendant claims that he was authorized by law in that he was, as the servant of the state, in the exercise of the right of eminent domain belonging to his principal. The state can not ordinarily exercise that right save in accordance with a special act of the legislature, or through the constituted authorities by virtue of some general statute. . . . Nor can the defendant protect himself from liability for that his act of blasting out the rocks with gunpowder was necessary, and hence that the effects of it upon the adjoining premises were an unavoidable result of a necessary act. The case of Hay v. Cohoes Co., supra, shows that unless there is a right to the use of the adjacent lands for the purposes of the work, it matters not that the mode adopted of carrying on the work was necessary." Where a city takes possession of private lands and constructs a street and street railway thereon in the absence and without the knowledge or acquiescence of the owner, the owner can maintain an action for the recovery thereof despite the public use: Green v. City of Tacoma, 51 Fed. 622.

[298] Radcliff v. Mayor &c., 4 N. Y. 195; Ballinger v. New York &c. R. Co., 23 N. Y. 42. In Atwater v. Trustees &c., 124 N. Y. 602; s. c. 27 N. E. 385, the village while building a bridge under statutory authority erected a coffer-dam in the outlet of a lake, which was necessary for the work, which obstructed the flow of water from the lake, and caused it to remain on plaintiff's land and deprived him of its beneficial use for one season. It was held that as the work was properly and expeditiously done there was not a taking of plaintiff's property and that the vil-

to enter upon private property it is liable in damages for such trespass, though unattended with negligence.[299] And if it have such statutory right it may be liable for an injury caused by negligent performance.[300] Trespass for tearing down a fence, cutting trees and building a sidewalk, under the belief that there has been an encroachment on the street, renders the city liable.[301] An unauthorized act of park commissioners in taking possession of property on the sides of a street for the purpose of widening it without proceedings to condemn, after which the city took possession of the street, graded and kept it in repair, and otherwise exercised acts of care over it, was held to be a ratification of the unauthorized act of the commissioners, and will make the city liable.[302] Where its officers, under the authority of the municipality, commit a trespass upon and seize and appropriate private property in opening and widening a

lage was not liable for the damages. In Mayor &c. v. Willison, 50 Md. 138, the city in the exercise of powers conferred by statute, and with reasonable care and skill, having changed the natural flow of surface water which usually found its way into a mill race in the city, so that a larger flow than usual was emptied into the mill race along a given street, and in times of heavy rains a larger quantity of mud, sand and debris was thus carried into the race near the mill, it was held that the city was not liable for the injury caused by these obstructions. The court, speaking of such consequential damages, said:—"Property thus injured is not in the constitutional sense taken for public use. This doctrine was long since announced, after the most careful consideration by courts of the highest authority: Collander v. Marsh, 1 Pick. (Mass.) 418; O'Connor v. Pittsburg, 18 Pa. St. 187. It was also approved in the leading cases of Goszler v. Corporation of Georgetown, 6 Wheat. 593, and Smith v. Corporation of Washington, 20 How. 135. These authorities have since been followed by the decisions of almost every state of the Union where the question has arisen, and in fact to such an extent that even the citation of the cases has become burdensome." Contra, Crawford v. Village of Delaware, 7 Ohio St. 459.

[299] Tremain v. Cohoes Co., 2 N. Y. 163; Pixley v. Clark, 35 N. Y. 520.

[300] Perkins v. City of Lawrence, 136 Mass. 305, where Allen, J., said: —"The plaintiff in his opening stated that the injury of which he complains was caused by the negligence of defendant's servants, and so brought his case directly within the authority of Hand v. Inhabitants &c., 126 Mass. 324, where the town was held liable for an injury to the plaintiff's property through neglect in the construction of water-works which the town had been authorized by a special statute, voluntarily accepted, to construct and to receive profits from; and the case is distinguishable from one where the work was done in a reasonable, proper and skilful manner, as in Hall v. Inhabitants &c., 133 Mass. 433, in which case the damage can be recovered only in the manner pointed out by statute."

[301] Brink v. Borough of Dunmore, 174 Pa. St. 395; s. c. 34 Atl. 598.

[302] City of Omaha v. Croft, 60 Neb. 57; s. c. 82 N. W. 120.

street, without complying with the statute providing for condemnation, the city is liable.[303] The deposit of refuse on an owner's premises is a trespass and liability ensues,[304] and so are injuries from disposing of the garbage of the city by the board of public works.[305] By authorizing a contract to raise the grade of the street the city is not liable for dirt placed on abutting property by the contractor, in the absence of negligence in the plan.[306] Where a drain is extended into an abutting lot and is carelessly left uncovered the city is liable for an injury.[307] The city is not liable for dirt deposited by a contractor upon the property of an abutting owner.[308]

§ 818. **Liability for waste.**—The provision of the New York code of procedure authorizing an action by a taxpayer against the municipal governing body to prevent "waste or injury to" municipal property is confined to cases where the acts complained of are without power or where corruption or fraud is charged.[309] But the courts may interfere by injunction to restrain municipal authorities where their threatened action will produce irreparable injury, and consists in the illegal disposition of public property by devoting it to private uses; and disobedience to such injunction is punishable as a criminal contempt.[310] And under the New York statute of 1872 a taxpayer may maintain an equitable action against the town board of auditors to vacate the audit of an illegal claim on the ground that such audit is without authority or fraudulent and collusive, and also to restrain the collection of a tax therefor.[311]

[303] City of Omaha v. Croft, 60 Neb. 57; s. c. 82 N. W. 120.

[304] City of San Antonio v. Mackey, 14 Tex. Civ. App. 210; s. c. 36 S. W. 760.

[305] Kuehn v. City of Milwaukee, 92 Wis. 263; s. c. 65 N. W. 1030.

[306] City of Bloomington v. Wilson, 14 Ind. App. 476; s. c. 43 N. E. 37.

[307] Willis v. City of Newbern, 118 N. C. 132; s. c. 24 S. E. 706.

[308] Fuller v. City of Grand Rapids, 105 Mich. 529; s. c. 63 N. W. 530.

[309] Talcott v. City of Buffalo, 125 N. Y. 280; s. c. 26 N. E. 263, an action by a taxpayer against the city where it was charged that by the substitution of electric lights for gas the expense of lighting would be increased without any corresponding benefit to the city or citizens, and that the official acts of the council in respect thereto were illegal, and it was held on appeal that the demurrer to the complaint should have been sustained because there was no averment that the common council did not have, under the city charter, power to provide for the lighting of the streets as in its discretion might seem best, and no charge of fraudulent or corrupt action of the authorities.

[310] People v. Dwyer, 90 N. Y. 402.

[311] Osterhoudt v. Rigney, 98 N. Y. 222. See also, Ayers v. Lawrence, 59 N. Y. 192; Metzger v. Attica R. Co., 79 N. Y. 171.

§ 819. Liability after notice—Implied notice.—Municipal authorities do not escape liability by acting only when they have actual notice; when a city structure or street has been out of repair so long that by reasonable diligence they could have notice of its condition, such notice may be imputed to them.[312] In such cases, and in particular where the street has been obstructed by the unauthorized act of other than city officers, what lapse of time will justify the imputation of negligence for not discovering the defect or obstruction is a question for the jury.[313] If a city omits to act with reasonable diligence after notice of an unlawful obstruction in the street which is dangerous in fact, it is liable for the injury thereby caused, though it has not by actual inspection ascertained its dangerous character,[314] and though it has instructed its subordinates to ascertain the facts and report.[315]

[312] Pomfrey v. Village of Saratoga Springs, 104 N. Y. 459; s. c. 11 N. E. 43. Where a displacement of a stone in a highway has continued for such a time as to imply notice to the city corporation, and its subordinates have had actual notice, their failure to report it and their opinion that it was not dangerous do not shield the city from liability: Goodfellow v. City of New York, 100 N. Y. 15; s. c. 2 N. E. 462. In Weed v. Village of Ballston Spa, 76 N. Y. 329, it was held that actual notice was not necessary to render the municipality liable for an unauthorized excavation if it had continued so long as to be notorious and to justify the presumption that it was known to the agents charged with the duty of street repair. See also, Requa v. City of Rochester, 45 N. Y. 129; Diveny v. City of Elmira, 51 N. Y. 506; Hume v. Mayor &c., 47 N. Y. 639. Evidence of the defective condition of a sidewalk a few days before the accident whereby plaintiff was injured is admissible in his action against the city. Nor is actual notice to the city of the defect required to be shown if the defect had existed for a considerable time: City of Chicago v. Dalle, 115 Ill. 386; s. c. 5 N. E. 578.

[313] Rehberg v. Mayor &c., 91 N. Y. 137; Hume v. Mayor &c., 47 N. Y. 640; s. c. 74 N. Y. 264; Steffan v. City of Buffalo, 21 N. Y. W. Dig. 289; Turner v. City of Newburgh, 109 N. Y. 301; s. c. 16 N. E. 344; Kunz v. City of Troy, 16 N. Y. St. 459; s. c. 1 N. Y. S. 596. Evidence that one of the village trustees lived opposite to the place where the defect was and had to pass it daily is sufficient to sustain a finding that the village trustees had notice of the defect: O'Reilly v. Village of Sing Sing, 15 N. Y. St. 905; s. c. 1 N. Y. S. 582. See also, Higgins v. Village of Salamanca, 6 N. Y. St. 119. That a sidewalk was inspected by a municipal officer shortly before an accident and was considered by him in a satisfactory condition is not a defense for the corporation, and it is a proper question whether the trustees used reasonable diligence to discover whether the walk was out of repair: Stebbins v. Village of Oneida, 23 N. Y. St. 702; s. c. 5 N. Y. S. 483.

[314] Rehberg v. Mayor &c., 91 N. Y. 137.

[315] Goodfellow v. City of New York, 100 N. Y. 15; s. c. 2 N. E. 462. A city is liable for an injury caused by a hydrant which its officers have allowed to stand within the limits of a sidewalk after notice of its ex-

No notice is necessary to render a city liable for an injury caused by the act of itself, or of an authorized officer or agent.[816] This subject of notice is treated at length in the chapter on Streets, etc.[817]

§ 820. **The same subject continued—Statutory notice.**—In many of the states it is provided by statute that actions for torts and negligence shall not be maintainable against municipal corporations unless a required notice of the injury and of the claim for damages be given within a time specified.[818] Under the charter of St. Paul, in Minnesota, a person "bereft of reason," by an injury received, is excused from giving such notice;[819] and the time limited for commencing actions against that city for injuries caused by its negligence is not applicable to statutory actions by the personal representatives of a deceased person for negligence causing his death.[820] The charter provisions in respect to notice to cities in cases of torts, and to other requisites preliminary to actions against them, are quite varied and require careful attention.[821] Under the charter of Appleton city the

istence and time to remove it: King v. City of Oshkosh, 75 Wis. 517; s. c. 44 N. W. 745.

[816] If a defect in a street be caused by accident or by the wrongful and unauthorized act of a third person the liability of the corporation does not begin until it has notice of the defect, or until the defect has existed for such a length of time that ignorance of its existence is inexcusable; but if it be occasioned by the act of the corporation itself or by the act of a person authorized by the corporation to make any use of the street which results in producing the defect, the corporation will be liable without notice: Russell v. Inhabitants &c., 74 Mo. 480. A village, though not liable for the defective construction of a drain by its trustees, acting as public officers, is liable for suffering the drain to continue in a defective condition after notice: Whipple v. Village of Fair Haven, 63 Vt. 221; s. c. 21 Atl. 533. See Weller v. City of Burlington, 60 Vt. 28; s. c. 12 Atl. 215, where the city was not liable for the negligence of the trustees acting as public officers. And to the same effect, Bates v. Village of Rutland, 62 Vt. 178; s. c. 20 Atl. 278.

[817] In vol. 2, ch. 29.

[818] The provision of the special Minnesota law of 1881 incorporating the city of Minneapolis, that no action shall be maintained against the city "on account of any injuries received by means of any defect in the condition of any bridge, street, etc., unless notice is given within thirty days stating the place and time of its occurrence, and that the person so injured will claim damages from the city for such injury," applies to injuries to property as well as to person: Nichols v. City of Minneapolis, 30 Minn. 545; s. c. 16 N. W. 410. See also, Powers v. City of St. Paul, 36 Minn. 87; s. c. 30 N. W. 433; Pye v. City of Mankato, 38 Minn. 536; s. c. 38 N. W. 621.

[819] Ray v. City of St. Paul, 44 Minn. 340; s. c. 46 N. W. 675.

[820] Maylone v. City of St. Paul, 40 Minn. 406; s. c. 42 N. W. 88. And see Clark v. Manchester, 62 N. H. 577.

[821] In Wisconsin it is provided by

determination of the council is a bar to an action but not to an appeal, and the objection that the claim has not been presented to the common council must be taken by demurrer or answer or it is waived.[322] It is enough that such notice be in substantial compliance, as to form and service, with the statutory requirement.[323] The Vermont statute requires notice of "the place" where the injury was received; and where there was no controversy or dispute upon the trial as to the place or as to the prominent surrounding objects, or any of the facts bearing upon the question, it was held to be a question of law for the court and not a proper subject for the jury whether the notice contained a sufficiently accurate description.[324] Ample

the Antigo city charter that no action in tort shall lie against the city unless a statement of the wrong shall be presented to the common council within sixty days; and it is held that under this and connected provisions of the charter there is a right of action after presenting the statement to the council, but no right of appeal from the council's determination: Vogel v. City of Antigo, 81 Wis. 642; s. c. 51 N. W. 1008.

[323] Sheel v. City of Appleton, 49 Wis. 125; s. c. 5 N. W. 27. The charter provision of Madison city that no action shall be maintained against it "upon any claim or demand" until it shall first have been presented to the common council for allowance does not include actions for personal torts: Kelley v. City of Madison, 43 Wis. 638.

[322] Harder v. City of Minneapolis, 40 Minn. 446; s. c. 42 N. W. 350; Clark v. City of Austin, 38 Minn. 487; s. c. 38 N. W. 615. In McDonald v. City of Troy, 36 N. Y. St. 704; s. c. 13 N. Y. S. 385, plaintiff's attorney prepared the claim, presented a copy to the comptroller, said he had the original with him, and asked if that was all he wanted, and was answered "Yes." It was held a substantial compliance with the defendant's charter, as the comptroller had obtained the notice the law contemplated. The statement required by the New Hampshire General Laws, ch. 75, § 7, of the exact place where damage to a traveler on a highway is received, is sufficient if upon the information contained in it and by the exercise of reasonable diligence the officers of the town can find the place: Carr v. Ashland, 62 N. H. 665.

[324] Holcomb v. Town of Danby, 51 Vt. 428. It was said, however, that although the trial court erred in submitting the question to the jury the judgment would not have been reversed if the jury had decided correctly. The degree of certainty which satisfies the statute was expounded to the jury in the trial court to be a description "with as much particularity and minuteness as a person of common business capacity, in the exercise of such care and prudence as such persons generally use in their own affairs, would ordinarily use to inform another person of like capacity of the place where the accident happened." This was held to be erroneous because it "leaves out of sight the fact that the party is legally bound to give notice of the place where the accident happened; that the party to whom the notice is given has an interest and an object in knowing the place; that he has a legal right to the information, and that the object of the notice is to enable the

opportunity to acquire notice is not actual notice.[325] A charter provision that a city shall not be liable for the defective condition of a street unless it be shown that the ward alderman knew of it does not apply to an obstruction placed in the street by a city servant while repairing it.[326]

§ 821. **The same subject continued—New York decisions.**—The New York statute of 1886 prohibiting actions against municipal corporations, for personal injuries, unless the notice therein prescribed shall have been filed with the corporation counsel within six months after the cause of action accrued, and requiring such actions to be brought within one year, is constitutional and valid.[327] The provision of the Buffalo charter, requiring the claim to have been made forty days before action brought, is a condition precedent, and in an action against the city for a tort the complaint must allege the presentation of the claim to the common council and the expiration of forty days thereafter before the commencement of the action.[328] Under the statute of 1881 (ch. 183), the city of Cohoes is not liable for personal injuries from unsafe sidewalks, etc., unless actual notice of the danger has been given to the common council or street superintendent at least twenty-four hours before the injury, and therefore opportunity to acquire notice of the danger is not enough to create such liability.[329]

§ 822. **Impeaching municipal legislative acts for fraud.**—The rule that courts will not inquire into the motives of the legislature in enacting a law even where fraud and corruption are charged is relaxed in respect to municipal bodies, and the legislative acts of municipal councils or assemblies may be impeached for fraud at the instance of persons thereby injured.[330] Starting, however, with the presumption that municipal legislative acts have been adopted under good motives and on sufficient information,[331] a city is not liable

party to whom it is given, readily to find the place." See also, on sufficiency of notice under this statute, Read v. Town of Calais, 48 Vt. 7; Purrington v. Town of Warren, 49 Vt. 19; Boyd v. Town of Readsboro, 52 Vt. 522; Perry v. Town of Putney, 52 Vt. 533; Law v. Town of Fairfield, 46 Vt. 425; Bean v. Town of Concord, 48 Vt. 30.

[325] McNally v. City of Cohoes, 53 Hun (N. Y.) 202; s. c. 6 N. Y. S. 842.

[326] Adams v. City of Oshkosh, 71 Wis. 49; s. c. 36 N. W. 614.

[327] Merz v. City of Brooklyn, 33 N. Y. St. 577; s. c. 11 N. Y. S. 778; s. c. affirmed 128 N. Y. 617; 28 N. E. 253. See also, Reining v. City of Buffalo, 102 N. Y. 308; s. c. 6 N. E. 792; Wheeler v. Jackson, 41 Hun (N. Y.) 410; Gray v. Brooklyn, 10 Abb. Pr. N. S. (N. Y.) 186.

[328] Reining v. City of Buffalo, 102 N. Y. 308; s. c. 6 N. E. 792.

[329] McNally v. City of Cohoes, 53 Hun (N. Y.) 202; s. c. 6 N. Y. S. 842.

[330] Glasgow v. St. Louis, 107 Mo. 198; s. c. 17 S. W. 743; Cooley Const. Lim. (5th ed.) 225.

[331] New York &c. R. Co. v. Mayor

for its neglect to pass just and reasonable ordinances in respect to matters left to the discretion of its council;[332] nor for its neglect to enforce them if no statutory liability has been imposed.[333] Where a subject-matter is intrusted to a town or city for legislative or judicial action, the duty is essentially discretionary, and no person can claim damages for its non-performance.[334]

§ **823. Indictment for torts.**—A municipal corporation is indictable at common law for creating a public nuisance,[335] but perhaps not

&c., 1 Hilt. (N. Y.) 562; Milhau v. Sharp, 15 Barb. (N. Y.) 193; Buell v. Ball, 20 Iowa 282.

[332] In McDade v. City of Chester, 117 Pa. St. 414; s. c. 12 Atl. 421, the city council had legislative authority to limit or prohibit wholly the making and sale of fireworks within the corporate limits; but in an action for damages by one who was injured while aiding to extinguish a fire in a fireworks factory, it was held that the power to prohibit imposed no absolute duty to prohibit fireworks, and that the city was not liable for the failure of the council to exercise its power. See also, Carr v. Northern Liberties, 35 Pa. St. 324; Hill v. Board &c., 72 N. C. 55; Rivers v. City Council &c., 65 Ga. 376.

[333] Hines v. City of Charlotte, 72 Mich. 278; s. c. 40 N. W. 333, where the city having by ordinance established fire limits was held not responsible for loss by fire starting in a wooden building within such limits and in violation of the ordinance, though the city had notice that the building was about to be erected and took no steps to prevent it. The court said:—"The rule is well established, however, not only in this state but in most of the states, that simply as municipal corporations, apart from any contract theory, no public bodies can be made responsible for official neglect involving no active misfeasance. It is only where corporations have been guilty of some positive mischief produced by active misconduct that they have been held liable, and not from mere non-feasance, or for errors of judgment. Municipal corporations, under their charters and ordinances, do not become insurers of the property within their corporate limits from destruction by reason of the neglect or refusal of their officers to enforce their ordinances: Village of St. John v. McFarlan, 33 Mich. 72." See also, Stillwell v. Mayor &c., 17 J. & Sp. (N. Y.) 360; s. c. affirmed 96 N. Y. 649; Griffin v. Mayor &c., 9 N. Y. 456; Lorillard v. Town of Monroe, 11 N. Y. 392; Wheeler v. City of Plymouth, 116 Ind. 158; s. c. 18 N. E. 532. It is also sometimes provided, as in the Albany charter (laws 1883, ch. 298, tit. 3, § 44), that a city shall not be liable in damages for an omission to pass or enforce ordinances: See Coonley v. City of Albany, 132 N. Y. 145, 153; s. c. 30 N. E. 382.

[334] Lehigh Co. v. Hoffort, 116 Pa. St. 119; s. c. 9 Atl. 177.

[335] Brayton v. City of Fall River, 113 Mass. 218, 227, where the court said:—"If the sewers are so built or managed as to create a public nuisance, the defendants are indictable." See also, Eastman v. Meredith, 36 N. H. 284, 289; People v. Adsit, 2 Hill (N. Y.) 619. In People v. Corporation &c. of Albany, 11 Wend. (N. Y.) 539, the mayor, aldermen, etc., of the city were indicted for not cleaning a foul barn connected with the river and a verdict

for not abating a nuisance created by another.[336] In some states a municipal corporation is indictable at common law for neglecting the public health and public streets,[337] and for misfeasance as well as non-feasance.[338] Where the duty of keeping in repair the highways and bridges is imposed by statute upon the towns in which they are located, an information will lie against a town for failing to repair a bridge either built or adopted by it.[339] In England the rule has repeatedly been laid down that where an indictment can be maintained against a corporation for a public injury an action on the case can be maintained for a special damage thereby done to an individual;[340] and the ground both of the indictment and of the private action is deemed to be the breach of a covenant entered into by the corporation upon a consideration received from the sovereign power.[341] In New

obtained at general sessions. On appeal to the supreme court, Nelson, J., said:—"It is well settled that when a corporation are bound to repair a highway or navigable river they are liable to indictment for neglect of their duty. An indictment and information are the only remedies to which the public can resort for a redress of their grievances in this respect."

[336] State v. Town of Burlington, 36 Vt. 521.

[337] Hamar v. Covington, 3 Met. (Ky.) 494; Hill v. State, 4 Sneed (Tenn.) 443; McCrowell v. Mayor &c., 5 Lea (Tenn.) 685; State v. Corporation of Shelbyville, 4 Sneed (Tenn.) 176; State v. Town of Wittingham, 7 Vt. 390.

[338] In Commonwealth v. Proprietors &c., 2 Gray (Mass.) 339, it was held that a corporation could be indicted for a misfeasance as well as a non-feasance, and Bigelow, J., said:—"Corporations can not be indicted for offenses which derive their criminality from evil intention, or which consist in a violation of those social duties which appertain to men and subjects. But beyond this there is no good reason for their exemption from the consequences of unlawful and wrongful acts committed by their agents in pursuance of authority derived from them."

[339] Town of Saukville v. State, 69 Wis. 178; s. c. 33 N. W. 88; Town of Byron v. State, 35 Wis. 313; State v. Town of Campton, 2 N. H. 513; State v. Inhabitants &c., 37 Maine 451; Davis v. City of Bangor, 42 Maine 522; State v. City of Portland, 74 Maine 268.

[340] McKinnon v. Penson, 8 Ex. 319, 327; Hartnall v. Ryde Com'rs, 4 B. & S. 361. Referring to the last case in Borough of Bathurst v. MacPherson, L. R. 4 App. Cas. 256, the court said:—"It was there held that the statute creating the commissioners having expressly imposed upon them the obligation of repairing the roads, they are liable not only to be indicted for a breach of that duty, but to be sued by anybody who can show that by reason of such breach of duty he has sustained particular and special damage."

[341] In Weet v. Trustees &c., 16 N. Y. 161, 163, n., Selden, J., said:—"The principle which really lies at the basis of the case of Henly v. Lyme Regis, 5 Bing. 91, and of the series of English cases upon the authority of which that case was decided, is this:—That whenever an individual or corporation, for a consideration received from the sover-

Jersey when the neglect of a public duty results in a p an individual can not bring an action for his particul only remedy being indictment for the public wrong.[342] fense which is statutory only, the indictment is defective the words "against the form of the statute."[343] Under the penal code a public officer "upon whom any duty is e law who wilfully neglects to perform that duty is guilty meanor" and indictable therefor.[344] The Maine rule, an the general rule, is that the same proof is required to sustain ment against a city for neglect of its streets as to obtain of damages.[345]

§ 824. Not indictable for felony.—The state, counties, tow and villages can not be indicted for a felony,[346] but their o often declared by statute to be guilty of felony for false audit ing accounts, embezzlements, etc.[347] In New York a corpora be fined for contempt of court in an amount to cover the ant's costs and expenses and also his damages for loss or thereby caused in cases where he has no action therefor.[348] state of New York a common carrier corporation is guilty of demeanor in employing intemperate persons after notice th are such,[349] and is guilty of a misdemeanor for the unlicensed of intoxicants to its passengers.[350]

eign power, has become bound by covenant or agreement, either express or implied, to do certain things, such individual or corporation is liable in case of neglect to perform such covenant, not only to a public prosecution by indictment, but to a private action at the suit of any person injured by such neglect."

[342] Mayor &c. v. Kiernan, 50 N. J. L. 246; s. c. 13 Atl. 170; Livermore v. Board &c., 31 N. J. L. 507; Cooley v. Chosen Freeholders &c., 27 N. J. L. 415; Board &c. v. Strader, 18 N. J. L. 118.

[343] In Queen v. Mayor &c., L. R. 19 Q. B. D. 612, an indictment against a municipal corporation for non-repair of a highway was held bad for this omission. Lord Coleridge said: —"This appears to have been decided in several cases; and we think it is applicable to a case like present, where a criminal neg duty is charged upon a corpo who in the absence of a st would not be liable to be in for the non-repair of a highway

[344] So held as to an excise missioner: People v. Meakim, 1 Y. 214; s. c. 30 N. E. 828.

[345] Davis v. City of Bangor, Maine 522.

[346] Commonwealth v. Propr &c., 2 Gray (Mass.) 339, where Sh law, J., said:—"Corporations not be indicted for offenses w derive their criminality from intention. They can not be gu of treason or felony, of perjury offenses against the person."

[347] N. Y. Pen. Code, §§ 164-167, 1

[348] Code of Procedure, § 2284.

[349] Laws 1892, ch. 401, § 33.

[350] Laws 1892, ch. 401; § 30.

Jersey when the neglect of a public duty results in a public injury an individual can not bring an action for his particular loss, the only remedy being indictment for the public wrong.[342] For an offense which is statutory only, the indictment is defective if it omits the words "against the form of the statute."[343] Under the New York penal code a public officer "upon whom any duty is enjoined by law who wilfully neglects to perform that duty is guilty of a misdemeanor" and indictable therefor.[344] The Maine rule, and probably the general rule, is that the same proof is required to sustain an indictment against a city for neglect of its streets as to obtain a recovery of damages.[345]

§ 824. **Not indictable for felony.**—The state, counties, towns, cities and villages can not be indicted for a felony,[346] but their officers are often declared by statute to be guilty of felony for false audits, falsifying accounts, embezzlements, etc.[347] In New York a corporation may be fined for contempt of court in an amount to cover the complainant's costs and expenses and also his damages for loss or injury thereby caused in cases where he has no action therefor.[348] In the state of New York a common carrier corporation is guilty of a misdemeanor in employing intemperate persons after notice that they are such,[349] and is guilty of a misdemeanor for the unlicensed selling of intoxicants to its passengers.[350]

eign power, has become bound by covenant or agreement, either express or implied, to do certain things, such individual or corporation is liable in case of neglect to perform such covenant, not only to a public prosecution by indictment, but to a private action at the suit of any person injured by such neglect."

[342] Mayor &c. v. Kiernan, 50 N. J. L. 246; s. c. 13 Atl. 170; Livermore v. Board &c., 31 N. J. L. 507; Cooley v. Chosen Freeholders &c., 27 N. J. L. 415; Board &c. v. Strader, 18 N. J. L. 108.

[343] In Queen v. Mayor &c., L. R. 19 Q. B. D. 602, an indictment against a municipal corporation for non-repair of a highway was held bad for this omission. Lord Coleridge said: —"This appears to have been decided in several cases; and we think it is applicable to a case like the present, where a criminal neglect of duty is charged upon a corporation who in the absence of a statute would not be liable to be indicted for the non-repair of a highway."

[344] So held as to an excise commissioner: People v. Meakim, 133 N. Y. 214; s. c. 30 N. E. 828.

[345] Davis v. City of Bangor, 42 Maine 522.

[346] Commonwealth v. Proprietors &c., 2 Gray (Mass.) 339, where Bigelow, J., said:—"Corporations can not be indicted for offenses which derive their criminality from evil intention. They can not be guilty of treason or felony, of perjury or offenses against the person."

[347] N. Y. Pen. Code, §§ 164–167, 470.

[348] Code of Procedure, § 2284.

[349] Laws 1892, ch. 401, § 39.

[350] Laws 1892, ch. 401; § 30.

on
v.

3 6105 063 720 713

3 6105 063 720 7